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Attorneys for Creditors Card,
Hernandez, Gentry and Skaf

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:

Circuit City Stores, Inc., *et al.*,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)
Jointly Administered

**DECLARATION OF MICHAEL
RIGHETTI IN SUPPORT OF
CREDITORS GENTRY,
HERNANDEZ, CARD, AND SKAF'S
OMNIBUS MOTION REQUESTING
AN ORDER APPLYING
BANKRUPTCY RULE 7023 TO
THEIR CLASS PROOFS OF CLAIM
PURSUANT TO BANKRUPTCY
RULE 9014(C)**

Date: April 15, 2010
Time: 2:00 p.m. ET
Room: 5000
Hon. Kevin Huennekens

**DECLARATION OF MICHAEL RIGHETTI IN SUPPORT OF CREDITORS GENTRY, HERNANDEZ, CARD,
AND SKAF'S OMNIBUS MOTION REQUESTING AN ORDER APPLYING BANKRUPTCY RULE 7023 TO
THEIR CLASS PROOFS OF CLAIM PURSUANT TO BANKRUPTCY RULE 9014(C)**

1 I, MICHAEL RIGHETTI, declare:

2 1. I am an attorney duly licensed to practice law in the State of California and I represent
3 the Plaintiffs herein. I have personal knowledge of the matters set forth herein, and would and
4 could testify thereto if called as a witness herein. I am licensed to practice in all of California's
5 State Courts as well as the United States District Courts for the Northern, Eastern, Southern, and
6 Central Districts of California. In addition, I have been admitted to appear in the United States
7 Bankruptcy Court, Eastern District of Virginia.

8
9 2. Attached hereto as Exhibit 1 is a true and correct copy of the complaint filed in *Gentry v.*
10 *Circuit City Stores, Inc. et al.*

11 3. Attached hereto as Exhibit 2 is a true and correct copy of the complaint filed in
12 *Hernandez v. Circuit City Stores, Inc., et al.*

13 4. Attached hereto as Exhibit 3 is a true and correct copy of the Proofs of Claim filed for
14 Mr. Gentry, Mr. Hernandez and their respective putative classes.

15
16 5. Attached hereto as Exhibit 4 is a true and correct copy of the complaint filed in *Skaf, et*
17 *al. v. Circuit City Stores, Inc. et al.*

18 6. Attached hereto as Exhibit 5 is a true and correct copy of the complaint filed in *Card v.*
19 *Circuit City Stores, Inc. et al.*

20 7. Attached hereto as Exhibit 6 is a true and correct copy of the Proofs of Claim filed by
21 Mr. Skaf, Mr. Card and their respective putative classes.

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1 8. Attached hereto as Exhibit 7 is a true and correct copy of the relevant meet and confer
2 correspondence.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 31st day of March in the city of San Francisco, CA.
5
6
7

8 /s/ Michael Righetti
9 **Michael Righetti**
Attorney for Creditors
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EXHIBIT 1

AUG 29 2002

MATTHEW RIGHETTI, ESQ. {121012}
EDWARD J. WYNNE, ESQ. {165819}
JOHN GLUGOSKI, ESQ. {191551}

John A. Clarke, Executive Officer/Clerk
By STEPHANIE SIANEZ, Deputy

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COPY

SUPERIOR COURT OF CALIFORNIA,

LOS ANGELES COUNTY

8C280631

ROBERT GENTRY, individually
and on behalf of other members of
the general public similarly situated

NO.

CLASS ACTION

Plaintiff,

COMPLAINT

vs.

1. Violation of Labor Code;
2. Violation of B & § 17200, et seq;
3. Conversion

CIRCUIT CITY STORES, INC.,
and DOES 1 through 50, inclusive

Defendants.

FIRST CAUSE OF ACTION

COMES NOW, plaintiff, an individual over the age of eighteen (18), and brings this challenge to defendant's lucrative, repressive and unlawful business practices on behalf of himself and a class of all others similarly situated and for a Cause of Action against defendants,

1 CIRCUIT CITY STORES, INC, and DOES 1-50, inclusive, (hereinafter defendants) and each of
2 them, alleges as follows:

3
4 **THE PARTIES, JURISDICTION AND VENUE**

5 1.

6 This class action is brought pursuant to §382 of the California Code of Civil Procedure.
7 The monetary damages and restitution sought by plaintiff exceed the minimal jurisdiction limits
8 of the Superior Court and will be established according to proof at trial. The monetary damages
9 sought on behalf of each and every member of the class and as aggregate class damages exceed
10 those jurisdictional limits as well. However, the claims of individual class members, including
11 plaintiff, are under the \$75,000 jurisdictional threshold for federal court. For example, a class
12 member who was or has been employed for a relatively brief period could never reasonably be
13 expected to receive a recovery of \$75,000 or more. Further there is no federal question at issue,
14 as exempt status questions and remedies relating thereto are based solely on California law and
15 statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and Business and
16 Professions Code.
17

18 2.

19 Venue is proper in Los Angeles County as said defendants own/owned and
20 operate/operated retail stores in the County of Los Angeles and because plaintiff worked in
21 several stores within Los Angeles (Culver City, Lakewood, etc.). Defendants' liability arose in
22 Los Angeles County and many of the wrongful acts complained of occurred in that county.
23 Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
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1 defendants include both individuals who reside in California and corporations licensed to do
2 business and actually doing business in the State of California.

3
4 3.

5 Defendants own/owned and operate/operated an industry, business and establishment in
6 over 100 separate geographic locations within the State of California, including within Los
7 Angeles County, for the purpose of operating a retail store to sell goods. As such, and based
8 upon all the facts and circumstances incident to defendants' business in California, defendants are
9 subject to California Labor Code Sections 1194, et seq., 500, et seq., California Business and
10 Professions Code Section 17200, et seq., (Unfair Practices Act) and the applicable wage order(s)
11 issued by the Industrial Welfare Commission.
12

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14 4.

15 At all times herein mentioned plaintiff and the class identified herein worked for
16 defendants as salaried customer service managers in defendant's California based retail stores.
17 The salaried customer service manager position is not a position which involves work which falls
18 within any exception to the above-referenced Labor Code sections, the Unfair Practices Act
19 and/or California Industrial Welfare Commission orders applicable to defendants' business.
20 Within the last four years, plaintiff has been an employed as a customer service manager for
21 defendants.

22 5.

23 Plaintiff does not know the true names or capacities, whether individual, partner or
24 corporate, of the defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
25 said defendants are sued under such fictitious names, and plaintiff prays leave to amend this
26 complaint when the true names and capacities are known. Plaintiff is informed and believes and
27

1 thereon alleges that each of said fictitious defendants was responsible in some way for the
2 matters alleged herein and proximately caused plaintiff and members of the general public and
3 the class to be subject to the illegal employment practices, wrongs and injuries complained of
4 herein.

5
6 6.

7 At all times herein mentioned, each of said defendants participated in the doing of the
8 acts hereinafter alleged to have been done by the named defendants; and furthermore, the
9 defendants, and each of them, were the agents, servants and employees of each of the other
10 defendants, as well as the agents of all defendants, and at all times herein mentioned, were acting
11 within the course and scope of said agency and employment.

12 7.

13 At all times herein mentioned, defendants, and each of them, were members of, and
14 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
15 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16 8.

17 At all times herein mentioned, the acts and omissions of various defendants, and each of
18 them, concurred and contributed to the various acts and omissions of each and all of the other
19 defendants in proximately causing the injuries and damages as herein alleged.

20 9.

21 At all times herein mentioned, defendants, and each of them, ratified each and every act
22 or omission complained of herein. At all times herein mentioned, the defendants, and each of
23 them, aided and abetted the acts and omissions of each and all of the other defendants in
24 proximately causing the damages as herein alleged. Further, at all times mentioned herein, the
25 wage and hour related compensation policies of stores in California are and were dictated by,
26 controlled by, and ratified by the defendants herein and each of them.

FACTUAL ALLEGATIONS

10.

Plaintiff and all members of the class identified herein were regularly scheduled as a matter of uniform company policy to work and in fact worked as salaried customer service managers in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or overtime compensation for such overtime hours worked in violation of California Labor Code Section 1194 and the applicable California Industrial Welfare Commission wage order(s). Plaintiff and the other members of the class were improperly and illegally mis-classified by defendants as "exempt" managerial/executive employees when, in fact, they were "non-exempt" non-managerial employees according to California law. Plaintiff and the other members of the class have the right to be compensated by defendants at the appropriate compensatory wage rate for said work heretofore performed, consisting of the straight time rate plus the appropriate overtime premium as mandated by California law.

11.

This complaint is brought by plaintiff pursuant to California Code of Civil Procedure section 382 on behalf of a class. All claims alleged herein arise under California law for which plaintiff seeks relief authorized under California law. The class is comprised of, and defined as:

All California based salaried customer service managers who worked overtime for defendants and were not paid overtime wages from within the four years preceding the filing of this complaint and up to the time defendants re-classified the position to non-exempt status.

The members of the class are so numerous that joinder of all members would be impractical, if not impossible. The members of the class are readily ascertainable by a review of defendants' records. Further, the subject matter of this action both as to factual matters and as to matters of law, are such that there are questions of law and fact common to the class which predominate over questions affecting only individual members including, among other things, the following:

1 a. Statistically, one hundred percent of the class members were paid on a salary basis
2 with no overtime compensation paid for work accomplished in excess of forty hours per week, or
3 eight hours per day. Plaintiff is informed and believes and based thereon alleges that all class
4 members failed to meet the exemption requirements of California law such as 1) regularly spend
5 more than 50% of their time performing exempt work; 2) customarily and regularly exercised
6 discretion and independent judgment and; 3) have authority to hire and fire. Thus, plaintiff and
7 the class members were not exempt from the overtime requirements of California law for that
8 reason;

9 b. Defendants uniformly administered a corporate policy concerning both staffing
10 levels and duties and responsibilities of the class members which required that the class members
11 both work overtime without pay and regularly spend more than 50% of their time performing
12 non-exempt tasks. This included a uniform corporate pattern and practice of allocating and
13 authorizing inadequate staffing levels at the individual stores. This corporate conduct had the
14 effect of placing customer service and other clerical "non-management" duties and
15 responsibilities onto the shoulders of the class members who were customarily and regularly
16 caused to work far in excess of forty hours in a week and/or eight hours in a day without pay.
17 Thus, plaintiff and all other members of the class routinely, regularly and customarily (i.e., well
18 in excess of 50% of their work time) performed non-exempt, non-managerial work and work that
19 did not regularly involve discretion and independent judgment. Therefore, such employees are
20 entitled to overtime compensation under California law.

21 c. The duties and responsibilities of the salaried customer service manager position
22 at the defendants' stores were virtually identical from region to region, district to district, store to
23 store, and, employee to employee. Further, any variations in job activities between the different
24 individuals in these positions are legally insignificant to the issues presented by this action since
25 the central facts remain, to wit: these employees performed non-exempt work in excess of 50%
26 of the time in their workday, these employees did not regularly exercise discretion and
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1 independent judgment; these employees' work routinely included work in excess of 40 hours per
2 week and/or 8 hours per day and they were not, and have never been, paid overtime
3 compensation for their work.

4 d. With respect to those members of the class who were discharged by defendants or
5 voluntarily quit, and did not have a written contract for employment. The defendants, in
6 violation of California Labor Code Sections 201, and 202, et seq., respectively, had a consistent
7 and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid
8 wages of all such former employees. The defendants have willfully failed to pay the earned and
9 unpaid wages of such individuals, including, but not limited to, regular time, overtime, and other
10 wages earned and remaining uncompensated according to amendment, or proof.

11 12.

12 As a pattern and practice, also in violation of the aforementioned labor laws and wage
13 orders, defendants did not maintain any records pertaining to when salaried customer service
14 managers began and ended each work period, meal period, the total daily hours worked, and the
15 total hours worked per pay period and applicable rates of pay.

16 13.

17 There are predominant common questions of law and fact and a community of interest
18 amongst plaintiff and the claims of the absent class members concerning whether defendants'
19 regular business custom and practice of requiring substantial "overtime" work and not paying for
20 said work according to the overtime mandates of California law is, and at all times herein
21 mentioned was, in violation of California Labor Code Sections 1194 and 500, et seq., the Unfair
22 Practices Act and the applicable California Industrial Welfare Commission wage orders.
23 Defendants' employment policies and practices wrongfully and illegally failed to compensate
24 salaried customer service managers for substantial overtime compensation earned as required by
25 California law. For instance, questions of fact and/or law common to the members of the
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1 aforesaid class -- which predominate over any questions which may affect only individual
2 members -- are:

3 i. Whether defendants' salaried customer service managers were classified as
4 "exempt" in violation of California law;

5 ii. Whether defendants uniformly failed to pay overtime wages to its salaried
6 customer service managers by virtue of defendants' unlawful class wide designation of such
7 employees as "exempt" in violation of California law;

8 iii. Whether plaintiffs and the class could waive the wage and hour laws
9 designed for their benefit under California law, whether such waivers violate public policy and
10 whether such waivers were voluntary, knowing and valid;

11 iv. Whether defendants' conduct constituted an illegal, or unfair, business
12 practice in violation of California law;

13 v. Whether plaintiff and the class are entitled to compensatory damages
14 pursuant to the California Labor Code;

15 vi. Whether plaintiff and the class are entitled to injunctive relief, including
16 restitution and/or disgorgement of profits pursuant to California law.

17 vii. What is the correct computation formula for the payment of overtime in
18 California as to salaried workers?

19 viii. What work is customarily and regularly accomplished by class members in
20 defendants' stores and what category (exempt or non-exempt) does that work properly fall into?

21 ix. What are the realistic requirements of the customer service manager job?

22 x. What are the expectations of defendants vis-à-vis the class members job
23 performance?

24 xi. Who has the burden of proof on the exemption issue?
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14.

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2 The prosecution of separate actions by the individual class members, even if possible,
3 would create a substantial risk of (1) inconsistent or varying adjudications with respect to
4 individual class members against the defendants and which would establish potentially
5 incompatible standards of conduct for the defendants, and/or (2) adjudications with respect to
6 individual class members which would, as a practical matter, be dispositive of the interests of the
7 other class members not parties to the adjudications or which would substantially impair or
8 impede the ability of the class members to protect their interests. Further, the claims of the
9 individual members of the class are not sufficiently large to warrant vigorous individual
10 prosecution considering all of the concomitant costs and expenses.

17.

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13 Such a pattern, practice and uniform administration of corporate policy regarding illegal
14 employee compensation, as described herein, is unlawful and creates an entitlement to recovery
15 by the plaintiff and the class identified herein, in a civil action, for the unpaid balance of the full
16 amount of the straight time compensation and overtime premiums owing, including interest
17 thereon, willful penalties, reasonable attorneys fees, and costs of suit according to the mandate of
18 California Labor Code Section 1194, et seq.

18.

19
20 Proof of a common business practice or factual pattern, of which the named plaintiff's
21 experiences are representative, will establish the right of each of the members of the plaintiff
22 class to recovery on the causes of action alleged herein.

19.

23
24 The plaintiff class is entitled in common to a specific fund with respect to the overtime
25 compensation monies illegally and unfairly retained by defendants. The plaintiff class is entitled
26 in common to restitution and disgorgement of those funds being improperly withheld by
27

1 defendants. This action is brought for the benefit of the entire class and will result in the creation
2 of a common fund.

3 WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class,
4 prays for judgment as hereinafter set forth.

5
6 **SECOND CAUSE OF ACTION**

7 COME NOW, plaintiff, individually and on behalf of both the class and the general
8 public and as a second, separate and distinct cause of action against defendants, and each of
9 them, alleges as follows:

10 20.

11 Plaintiff herein repeats and re-alleges as though fully set forth at length each and every
12 paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause
13 of action for relief regarding defendants' violations of Business and Professions Code 17200 et
14 seq. (Unfair Practices Act).

15 21.

16 Defendants, and each of them, have engaged in unfair business practices in California by
17 practicing, employing and utilizing the employment practices outlined in Paragraphs 10 through
18 13, inclusive, to wit, by requiring their salaried customer service managers to perform the labor
19 services complained of herein without overtime compensation. Defendants' utilization of such
20 unfair business practices constitutes unfair competition and provides an unfair advantage over
21 defendants' competitors. Plaintiff -- and other similarly situated members of the general public --
22 seek full restitution and disgorgement of monies, as necessary and according to proof, to restore
23 any and all monies withheld, acquired and/or converted by the defendants by means of the unfair
24 practices complained of herein. Plaintiff seeks, on his own behalf and on behalf of the general
25 public, the appointment of a receiver, as necessary. The acts complained of herein occurred, at
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1 least in part, within the last four (4) years preceding the filing of the original complaint in this
2 action.

3 22.

4 Plaintiff is informed and believes and on that basis alleges that at all times herein
5 mentioned defendants have engaged in unlawful, deceptive and unfair business practices, as
6 proscribed by California Business and Professions Code section 17200, including those set forth
7 in Paragraphs 10 through 13 herein thereby depriving plaintiff and other members of the general
8 public the minimum working condition standards and conditions due to them under the
9 California labor laws and Industrial Welfare Commission wage orders as specifically described
10 herein.

11 23.

12
13 Plaintiff, and all persons similarly situated, are further entitled to and do seek a both a
14 declaration that the above-described business practices are unfair, unlawful and/or fraudulent and
15 injunctive relief restraining defendants from engaging in any of such business practices in the
16 future. Such misconduct by defendants, unless and until enjoined and restrained by order of this
17 Court, will cause great and irreparable injury to all members of the class in that the defendants
18 will continue to violate these California laws, represented by labor statutes and IWC Wage
19 Orders, unless specifically ordered to comply with same. This expectation of future violations
20 will require current and future employees to repeatedly and continuously seek legal redress in
21 order to gain compensation to which they are entitled under California law. Plaintiff has no other
22 adequate remedy at law to insure future compliance with the California labor laws and wage
23 orders alleged to have been violated herein.
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THIRD CAUSE OF ACTION

COME NOW, plaintiff, individually and on behalf of a class and as a third, separate and distinct cause of action against defendants, and each of them, alleges as follows:

24.

Plaintiff herein repeats and re-alleges as though fully set forth at length each and every paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause of action for Conversion.

25.

At the time defendants refused to pay the wages due to plaintiff and the class, as alleged herein. Plaintiff owned and had the right to possess the withheld wages. Defendants willfully and without legal justification interfered with plaintiff's right to own and possess her wages. The exact amount of those wages is capable of being made certain from a review of either the information of plaintiff and class members, or from the records of defendants.

26.

In refusing to pay wages to the plaintiff and the class defendants unlawfully and intentionally took and converted the property of plaintiff and the class to their own use. At the time the conversion took place plaintiff and the class were entitled to immediate possession of the amounts of wages payable. This conversion was oppressive, malicious and fraudulent. This conversion was concealed by the defendants from the plaintiff and the class.

27.

Plaintiff and the class have been injured by this conversion and are entitled to: (1) all monies converted by the defendants with interest thereon; (2) any and all profits whether direct or indirect, the defendants acquired by their conversion; (3) punitive and exemplary damages.

WHEREFORE, plaintiff on his own behalf and on behalf of the members of the class and the general public, prays for judgment as follows:

1. For an order certifying the proposed class and sub-classes;

2. Upon the First Cause of Action, for damages according to proof as set forth in California Labor Code Section 1194, et seq. (and the applicable California Industrial Welfare Commission wage orders) related to wages due and owing and for restitution to plaintiff and the class, including waiting time penalties owed;

3. Upon the Second Cause of Action, for full restitution and disgorgement of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the defendants by means of the unfair practices complained of herein to plaintiff and other similarly effected members of the general public (and disgorgement from defendants) of all funds acquired by defendants by means of any acts or practices declared by this Court to be violative of the mandate established by California Business and Professions Code section 17200, et seq. Plaintiff seeks, on his own behalf and on behalf of the general public, the appointment of a receiver, as necessary.

4. Upon the Second Cause of Action, that defendants be ordered to show cause why they should not be enjoined and ordered to comply with the applicable California Industrial Welfare Commission wage orders and labor code laws related to payment of overtime compensation and record keeping for defendants' salaried customer service manager personnel who are primarily engaged in non-exempt non-discretionary work and work more than 40 hours per week or 8 hours per day; and for an order enjoining and restraining defendants and their agents, servants and employees related thereto;

5. Upon the Second Cause of Action, for the appointment of a receiver to receive, manage and distribute any and all funds disgorged from the defendants determined to have been wrongfully acquired by the defendants as a result of violations of California Business and Professions Code section 17200 et seq.;

6. Upon the Third Cause of Action, for (1) all monies converted by the defendants with interest thereon; (2) any and all profits whether direct or indirect, the defendants acquired by their conversion; (3) punitive and exemplary damages.

7. For pre-judgment interest as allowed by California Labor Code Sections 1194 and 218.6 and California Civil Code § 3287 for all class members (b), for waiting time penalties as authorized by California Labor Code Section 203 for those individuals no longer employed by defendants;

8. For reasonable attorneys fees, expenses and costs as provided by California Labor Code Section 1194, et seq. and other applicable California laws; and,

9. For such other and further relief the court may deem just and proper.

DATED: August 28, 2002

RIGHETTI ♦ WYNNE, P.C.

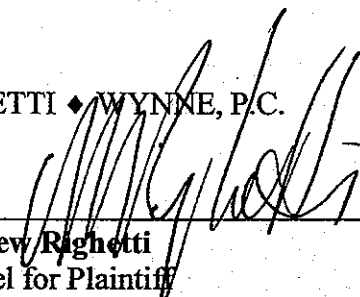

Matthew Righetti
Counsel for Plaintiff
and the Class

EXHIBIT 2

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23
24 Attorneys for the Plaintiff

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

26 **IN AND FOR THE COUNTY OF SAN DIEGO**

27 **JACK HERNANDEZ**, an individual, on
28 behalf of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

CIRCUIT CITY STORES, INC., a Virginia
Corporation authorized to do business in the
State of California, and Does 1 to 100,
Inclusive.

Defendants.

CASE NO. 37-2008-00082173-CU-OE-CTL

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

(1) FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
CAL. LAB. CODE §§ 510, 1194 AND
1198;

(2) FAILURE TO PROVIDE MEAL AND
REST PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 AND 512; and,
(3) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200 *et seq.*

DEMAND FOR A JURY TRIAL

BUSINESS OFFICE 2
CIVIL DIVISION
2008 APR 17 PM 4:38
JUDGE SUPERIOR COURT
SAN DIEGO COUNTY, CA

VIA FAX

1 Comes now the Plaintiff JACK HERNANDEZ, on behalf of themselves and all persons similarly
2 situated, allege as follows:

3 This class action is brought on behalf of present and former "Sales Managers" employed in
4 California by defendant CIRCUIT CITY STORES, INC. (hereinafter "CIRCUIT CITY"). All
5 allegations in this Complaint are based upon information and belief except for those allegations which
6 pertain to the Plaintiff named herein, JACK HERNANDEZ (hereinafter "PLAINTIFF"), and his counsel.
7 Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support
8 after a reasonable opportunity for further investigation and discovery.

9

10

JURISDICTION AND VENUE

11 1. This Court has jurisdiction over this action pursuant to Cal. Civ. Proc. Code § 410.10. The action
12 is brought pursuant to Cal. Civ. Proc. Code § 382. This class action is brought pursuant to §382 of the
13 California Code of Civil Procedure. The claims of individual class members, including plaintiff, are under
14 the \$75,000 jurisdictional threshold for federal court. For example, a class member who was or has been
15 employed for a relatively brief period could never reasonably be expected to receive a recovery of \$75,000
16 or more. Further there is no federal question at issue, as exempt status questions and remedies relating
17 thereto are based solely on California law and statutes, including the Labor Code, Civil Code, Code of Civil
18 Procedure, and Business and Professions Code. PLAINTIFF brings this action on behalf of himself, and all
19 persons similarly situated.

20 2. Venue is proper in this Court pursuant to Cal. Civ. Proc. Code §§ 395 and 395.5 because the
21 injuries to the persons complained of herein occurred in part in the County of San Diego and/or because
22 Circuit City conducts business in the County of San Diego.

23

24

CLASS DEFINITION

25 3. The CLASS consists of all California residents who are current and former employees of
26 CIRCUIT CITY who held any position as "Sales Managers," and who worked more than eight (8)
27 hours in any given day and/or more than forty (40) hours in any given week during the period
28 commencing on the date that is within four years prior to the filing of this complaint and through the

1 present date (the "Class Period"), and who were not paid overtime compensation pursuant to the
2 applicable Cal. Lab. Code and Industrial Welfare Commission Wage Order Requirements (the
3 "CLASS"). To the extent equitable tolling operates to toll claims by the CLASS against Defendants, the
4 Class period should be adjusted accordingly. The CLASS includes all such persons, whether or not they
5 were paid by commission, by salary, or by part commission and part salary.

6 4. The CLASS also consists of all California residents who are current and former employees of
7 CIRCUIT CITY who held any position as a "Sales Manager" and who were not provided with meal and
8 rest periods as required by the applicable Labor Code and IWC Wage Order Requirements in any given
9 week that is within three years prior to the filing of this Complaint and through the present date (the
10 "Meal and Rest Class Period Class Members").

11
12 **CLASS ALLEGATIONS**

13 5. PLAINTIFF JACK HERNANDEZ ("PLAINTIFF") alleges that at all material times
14 mentioned herein, he is and was:

- 15 (a) An individual who resides in the County of San Diego, California;
16 (b) Employed as an "Sales Manager" for defendant CIRCUIT CITY in the County of San
17 Diego from January 2, 2006 to October 29, 2006;
18 (c) Who worked more than eight (8) hours in any given day and more than forty (40)
19 hours in any given week;
20 (d) Did not receive overtime compensation, meal periods, or rest periods; and,
21 (e) Was a member of the CLASS as defined in paragraphs 3 and 4 of this Complaint.

22 6. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as
23 set forth in California Code of Civil Procedure § 382, in that:

- 24 (a) The persons who comprise the CLASS are so numerous that the joinder of all such
25 persons is impracticable and the disposition of their claims as a class will benefit the
26 parties and the Court;
27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are
28 raised in this Complaint are common to the CLASS and will apply uniformly to every

1 member of the CLASS;

2 (c) The claims of the representative PLAINTIFF are typical of the claims of each member
3 of the CLASS. PLAINTIFF, like all other members of the CLASS, has sustained damages
4 arising from Defendants' violations of the laws of California. PLAINTIFF and the
5 members of the CLASS were and are similarly or identically harmed by the same
6 unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by
7 the Defendants';

8 (d) The representative PLAINTIFF will fairly and adequately represent and protect the
9 interest of the CLASS, and has retained counsel who are competent and experienced in
10 Class Action litigation. There are no material conflicts between the claims of the
11 representative PLAINTIFF and the members of the CLASS that would make class
12 certification inappropriate. Counsel for the CLASS will vigorously assert the claims of all
13 Class Members.

14 7. In addition to meeting the statutory prerequisites to a Class Action, this action is properly
15 maintained as a Class Action pursuant to Cal. Code of Civil Procedure § 382, in that:

16 (a) Without Class certification and determination of declaratory, injunctive, statutory and
17 other legal questions within the class format, prosecution of separate actions by individual
18 members of the CLASS will create the risk of:

- 19 1) Inconsistent or Varying adjudications with respect to individual members of the
20 CLASS which would establish incompatible standards of conduct for the parties.
21 opposing the CLASS; or,
22 2) Adjudication with respect to individual members of the CLASS which would as
23 a practical matter be dispositive of interests of the other members not party to the
24 adjudication or substantially impair or impede their ability to protect their
25 interests.

26 (b) The parties opposing the CLASS have acted or refuse to act on grounds generally
27 applicable to the CLASS, thereby making appropriate final injunctive relief or
28 corresponding declaratory relief with respect to the CLASS as a whole; or

1 (c) Common questions of law and fact exist as to the members of the CLASS and
2 predominate over any question affecting only individual members, and a Class Action is
3 superior to other available methods for the fair and efficient adjudication of the
4 controversy, including consideration of

- 5 1) The interests of the members of the CLASS in individually controlling the
6 prosecution or defense of separate actions;
7 2) The extent and nature of any litigation concerning the controversy already
8 commenced by or against members of the CLASS;
9 3) The desirability or undesirability of concentrating the litigation of the claims in
10 the particular forum; and
11 4) The difficulties likely to be encountered in the management of a Class Action.

12 8. This Court should permit this action to be maintained as a Class Action pursuant to California
13 Code of Civil Procedure § 382 because:

- 14 (a) The questions of law and fact common to the CLASS predominate over any question
15 affecting only individual members;
16 (b) A Class Action is superior to any other available method for the fair and efficient
17 adjudication of the claims of the members of the CLASS;
18 (c) The members of the CLASS are so numerous that it is impractical to bring all members
19 of the CLASS before the Court;
20 (d) PLAINTIFF, and the other CLASS members, will not be able to obtain effective and
21 economic legal redress unless the action is maintained as a Class Action;
22 (e) There is a community of interest in obtaining appropriate legal and equitable relief for
23 the common law and statutory violations and other improprieties, and in obtaining
24 adequate compensation for the damages and injuries which CIRCUIT CITY's actions
25 have inflicted upon the CLASS;
26 (f) There is a community of interest in ensuring that the combined assets and available
27 insurance of CIRCUIT CITY is sufficient to adequately compensate the members of the
28 CLASS for the injuries sustained;

(h) CIRCUIT CITY has acted or refused to act on grounds generally applicable to the CLASS, thereby making final injunctive relief appropriate with respect to the CLASS as a whole

DEFENDANTS

9. PLAINTIFF is informed and believes, and based upon that information and belief alleges that Defendant CIRCUIT CITY, at all times during the Class Period was:

(a) An electronics retail company organized under the law of the Commonwealth of Virginia, has its principle place of business in the Commonwealth of Virginia, conducts business in California, and has its Southern California regional headquarters in the County of Los Angeles;

(b) The former employer of PLAINTIFF and the current and/or former employer of the putative CLASS members; and

(c) Failed to pay overtime compensation, and failed to provide meal and rest periods, to all members of the CLASS.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendant Does 1 through 100, inclusive, are unknown to the PLAINTIFF who therefore sues these defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 100, inclusive, when they are ascertained.

11. PLAINTIFF is informed and believes, and based upon that information and belief alleges that the Defendants named in this Complaint, including Does 1 through 100, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

12. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the defendants named in this Complaint, including Does 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other defendants and that each defendant was acting within the course of scope of his, hers or its authority as the agent, servant and/or employee of each of the other defendants. Consequently, all the defendants are jointly and

1 severally liable to the PLAINTIFF and the other members of the CLASS, for the damages sustained as a
2 proximate result of their conduct.

3 **THE CONDUCT**

4 13. PLAINTIFF JACK HERNANDEZ was hired by CIRCUIT CITY on or about November 14,
5 2002. He was employed by CIRCUIT CITY as a Sales Manager from January 2, 2006 until he ceased
6 working for CIRCUIT CITY on or about October 29, 2006. Mr. HERNANDEZ frequently worked six or
7 more days per week, and would, on average, work around fifty-five hours per week. Generally, "Sales
8 Managers" working for CIRCUIT CITY are required to work fifty or more hours per week.

9 14. Defendant CIRCUIT CITY improperly classified PLAINTIFF, and other members of the
10 CLASS, as "exempt". Consequently PLAINTIFF, and the other members of the CLASS, were not paid
11 overtime wages for hours worked in excess of eight hours per day and/or forty hours per week.
12 Industrial Welfare Commission Wage Order No. 4 sets forth the requirements which must be satisfied in
13 order for an employee to be exempt. Although classified as exempt, the duties of PLAINTIFF, and other
14 members of The CLASS, do not meet the requirements set forth in the Industrial Welfare Commission
15 Wage Order No. 4.

16 15. Throughout the Class Period, CIRCUIT CITY systematically misclassified PLAINTIFF and
17 every other Sales Manager who is a member of the CLASS as "exempt" when in fact they were not.

18 16. Accordingly, and despite the fact that PLAINTIFF, and the other members of CLASS,
19 regularly worked in excess of 8 hours a day and 40 hours per week, they did not receive overtime
20 compensation.

21 17. In addition, PLAINTIFF and other members of the CLASS, did not receive meal and rest
22 periods, although they were entitled to them.

23 18. As part of their employment, PLAINTIFF, and other members of the CLASS were required
24 to sign a binding arbitration agreement prohibiting class action claims. However, that agreement has
25 been held by the California Supreme Court, in Gentry v. Circuit City (2007) 42 Cal. 4th 443, to be
26 substantively and procedurally unconscionable, and is null and void as a matter of law.

27
28 **FIRST CAUSE OF ACTION**

FOR FAILURE TO PAY OVERTIME COMPENSATION

**[Cal. Lab. Code §§510, 1194 and 1198]
(By the CLASS and against all Defendants)**

19. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 17 of this Complaint.

20. Cal. Lab. Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

21. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid overtime compensation, interest thereon, together with the costs of suit, and attorneys fees. Cal. Lab. Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

22. CIRCUIT CITY has intentionally and improperly designated certain employees, including PLAINTIFF, and other members of the CLASS, as "exempt" "Sales Managers" to avoid payment of overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare Commission requirements.

23. In particular, the Industrial Welfare Commission Wage Order No. 4 sets forth the requirements which must be complied with to place an employee in an exempt category. For an employee to be exempt as a bona fide "executive," all the following criteria must be met:

(a) The employee's primary duty must be management of the enterprise, or of a customarily recognized department or subdivision;

(b) The employee must customarily and regularly direct the work of at least two (2) or more other employees; and,

(c) The employee must have the authority to hire and fire, or to command particularly serious attention to his or his recommendations on such actions affecting other employees; and,

(d) The employee must customarily and regularly exercise discretion and independent judgment; and,

(e) The employee be primarily engaged in duties which meet the test of exemption.

1 24. The Industrial Welfare Commission Wage Order No. 4 also sets forth the requirements which
2 must be complied with to place an employee in the "administrative" exempt category. For an employee
3 to be exempt as a bona fide administrator, all of the following criteria must be met:

- 4 (a) The employee must perform office or non-manual work directly related to
5 management policies or general business operation of the employer;
6 (b) The employee must customarily and regularly exercise discretion and independent
7 judgment; and
8 (c) The employee must regularly and directly assist a proprietor or an exempt
9 administrator; or,
10 (d) The employee must perform, under only general supervision, work requiring special
11 training, experience, or knowledge; or,
12 (e) The employee must execute special assignments and tasks under only general
13 supervision; and,
14 (f) The employee must be primarily engaged in duties which meet the test of exemption.

15 25. The Industrial Welfare Commission, ICW Wage Order No. 4 also sets forth the requirements
16 which must be complied with to place an employee in the "professional" exempt category. For an
17 employee to be exempt as a bona fide professional, all the following criteria must be met:

- 18 (a) The employee must primarily perform work which is intellectual or creative and that
19 requires the exercise of discretion and independent judgment;
20 (b) The employee must be licensed or certified by the State of California and is primarily
21 engaged in the practice of one of the following recognized professions: law, medicine,
22 dentistry, optometry, architecture, engineering, teaching, or accounting.

23 26. The job duties of PLAINTIFF, and other members of the CLASS, do not fit the definition of
24 either an exempt executive, administrative, or professional employee because:

- 25 (a) Less than fifty percent (50%) of their work hours are spent on managerial or
26 administrative (exempt) duties;
27 (b) More than fifty percent (50%) of their work hours are spent performing non exempt
28 duties, including but not limited to answering telephones, providing customer service,

1 sales, training, and following strict and exacting procedures;

2 (c) They do not have the discretion or independent judgment, in that they must follow
3 exacting and comprehensive company-wide policies and procedures which dictate every
4 aspect of their work day;

5 (d) They do not have the authority to hire/or and fire other personnel; and,

6 (e) None of the exemptions articulated in Wage Order No. 4, subparagraph (h), apply to
7 the PLAINTIFF, or to the other members of the CLASS.

8 27. At all times relevant hereto, from time to time, the PLAINTIFF, and the other members of the
9 CLASS, worked more that eight hours in a workday, and/or more than forty hours in a work week.

10 28. At all times relevant hereto, Defendant CIRCUIT CITY failed to pay PLAINTIFF, and the
11 other members of The CLASS, overtime compensation for the hours they have worked in excess of the
12 maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198. In fact, however,
13 PLAINTIFF, and the other members of The CLASS, and were regularly required to work overtime hours.

14 29. By virtue of CIRCUIT CITY's unlawful failure to pay addition compensation to the
15 PLAINTIFF, and the other members of the CLASS, for their overtime hours, the PLAINTIFF, and the
16 other members of the CLASS, have suffered, and will continue to suffer, injury and damages in amounts
17 which are presently unknown to them but which exceed the jurisdictional limits of this Court and which
18 will be ascertained according to proof at trial.

19 30. PLAINTIFF, and the other members of the CLASS, are informed and believe, and based
20 upon that information and belief allege, that CIRCUIT CITY knew or should have known that
21 PLAINTIFF, and the other members of the CLASS, did not qualify as exempt employees and purposely
22 elected not to pay them for their overtime labor.

23 31. CIRCUIT CITY acted and is acting intentionally, oppressively, and maliciously toward the
24 PLAINTIFF, and toward the other members of the CLASS, with a conscious disregard of their rights, or
25 the consequences to them, with the intent of depriving them of property and legal rights and otherwise
26 causing them injury.

27 32. PLAINTIFF, and the other members of The CLASS, request recovery of overtime
28 compensation according to proof, interest, attorney's fees and cost pursuant to Cal. Lab. Code §§ 218.5

1 and 1194(a), as well as the assessment of any statutory penalties against CIRCUIT CITY, in a sum as
2 provided by the Cal. Lab. Code and/or other statutes.

3 33. Further, PLAINTIFF, and the other members of The CLASS, are entitled to seek and recover
4 reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 218.5 and 1194.

5
6 **SECOND CAUSE OF ACTION**
7 **FOR FAILURE TO PROVIDE MEAL PERIODS AND REST PERIODS**
8 **[Cal. Lab. Code §§ 226.7 and 512]**
9 **(By The CLASS and Against All Defendants)**

10 34. PLAINTIFF realleges and incorporates by reference, as though fully set forth herein,
11 paragraphs 1 through 33 of this Complaint.

12 35. Cal. Lab. Code §§ 226.7 and 512 provide that no employer shall employ any person for a
13 work period of more than five (5) hours without a meal period of not less than 30 minutes.

14 36. Cal. Lab. Code § 226.7 provides that if an employer fails to provide an employee a meal
15 period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the
16 employee's regular rate of compensation for each five (5) hours of work that the meal period is not
17 provided.

18 37. CIRCUIT CITY has intentionally and improperly denied meal periods to PLAINTIFF, and
19 other members of The CLASS, in violation of Cal. Lab. Code §§ 226.7 and 512.

20 38. At all times relevant hereto, PLAINTIFF, and other members of The CLASS, have worked
21 more than five hours in a workday. At all relevant times hereto, CIRCUIT CITY has failed to provide
22 meal periods as required by Cal. Lab. Code §§ 226.7 and 512.

23 39. Cal. Lab. Code § 226.7 provides that employers shall authorize and permit employees to take
24 rest periods at the rate of ten (10) minutes net rest time per four (4) hours of work.

25 40. Cal. Lab. Code § 226.7 provides that if an employer fails to provide an employee rest
26 periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the
27 employee's regular rate of compensation for each workday that the rest period is not provided.

28 41. CIRCUIT CITY has intentionally and improperly denied rest periods to PLAINTIFF, and
other members of the CLASS, in violation of Cal. Lab. Code §§ 226.7 and 512.

1 42. At all times relevant hereto, the PLAINTIFF, and other members of the CLASS, worked
2 more than four hours in a workday. At all times relevant hereto, CIRCUIT CITY failed to provide rest
3 periods as required by Cal. Lab. Code §§ 226.7 and 512.

4 43. By virtue of CIRCUIT CITY's unlawful failure to provide rest periods to them, PLAINTIFF,
5 and other members of the CLASS, have suffered, and will continue to suffer, damages in the amounts
6 which are presently unknown to them, but which exceed the jurisdictional limits of this Court and which
7 will be ascertained according to proof at trial.

8 44. PLAINTIFF, and the other members of the CLASS, are informed and believe, and based
9 upon that information and belief allege, that CIRCUIT CITY knows or should have known that the
10 PLAINTIFF, and the other members of the CLASS, were entitled to meal periods and rest periods but
11 purposely elected not to provide these mandated periods.

12 45. PLAINTIFF, and the other members of the CLASS, are entitled to seek and recover
13 reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 226.7 and 512.

14
15 **THIRD CAUSE OF ACTION**
16 **FOR UNLAWFUL BUSINESS PRACTICES**
17 **[Cal. Bus. and Prof. Code §§ 17200 *et seq.*]**
18 **(By The CLASS and against All Defendants)**

19 46. The PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
20 paragraphs 1 through 45 of this Complaint.

21 47. CIRCUIT CITY is a "person" as that term is defined under California Business &
22 Professions Code § 17201.

23 48. Cal. Bus. and Prof. Code § 17200 defines unfair competition as "any unlawful, unfair, or
24 fraudulent business act or practice"

25 49. At all times relevant hereto, by and through the conduct described herein, CIRCUIT CITY
26 has engaged in unfair and unlawful practices by failing to pay PLAINTIFF, and the other members of the
27 CLASS, overtime compensations, and has failed to provide meal and rest breaks, pursuant to the
28 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. and
Prof. Code § 17200 *et seq.*, and has thereby deprived PLAINTIFF, and the other members of the CLASS,

1 of fundamental rights and privileges owed to them by law.

2 50. By and through the unfair and unlawful business practices described herein, CIRCUIT CITY
3 has obtained valuable property, money, and services from the PLAINTIFF, and the other members of the
4 CLASS, and have deprived them of valuable rights and benefits guaranteed by law, all to their detriment.

5 51. All the acts described herein as violations of, among other things, the Cal. Lab. Code and
6 Industrial Welfare Commission Wage Order, are unlawful and in violation of public policy; and in
7 addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful
8 business practices in violation of Cal. Bus. And Prof. Code § 17200 *et seq.*

9 52. PLAINTIFF, and the other members of The CLASS, are entitled to, and do, seek such relief
10 as may be necessary to restore to them the money and property which Defendant CIRCUIT CITY has
11 acquired, or of which PLAINTIFF, and other members of The CLASS, have been deprived, by means of
12 the above described unfair and unlawful business acts and practices.

13 53. PLAINTIFF, and the other members of The CLASS, are further entitled to, and do, seek a
14 declaration that the above described business practices are unfair and unlawful and that injunctive relief
15 should be issued restraining CIRCUIT CITY from engaging in any of the above described unfair and
16 unlawful business practices in the future.

17 54. PLAINTIFF, and the other members of The CLASS, have no plan, speedy, and/or adequate
18 remedy at law to redress the injuries which they have suffered as a consequence of the unfair and
19 unlawful business practices of CIRCUIT CITY. As a result of the unfair and unlawful business practices
20 described above, PLAINTIFF, and the other members of The CLASS, have suffered and will continue to
21 suffer irreparable harm unless CIRCUIT CITY is restrained from continuing to engage in these unfair
22 and unlawful business practices. In addition, CIRCUIT CITY should be required to disgorge the unpaid
23 moneys to PLAINTIFF, and the other members of The CLASS.

24

25 PRAYER

26 WHEREFORE, PLAINTIFF prays for judgment against CIRCUIT CITY in favor of PLAINTIFF
27 and the CLASS as follows:

28 1. ON THE FIRST CAUSE OF ACTION

1 A) For compensatory damages, including lost wages, commissions, bonuses, and other losses,
2 according to proof;

3 B) For general damages, according to proof;

4 C) For an award of interest, including prejudgment interest at the legal rate;

5 D) For statutory damages, including reasonable attorneys' fees and cost of suit

6 **2. ON THE SECOND CAUSE OF ACTION**

7 A) One hour of pay for each workday in which a rest period was not provided fore each four
8 hours of work;

9 B) One hour of pay for each five (5) hours of work in which a meal period was not provided;

10 C) For attorneys' fees and costs

11 **3. ON THE THIRD CAUSE OF ACTION**

12 A) For restitution and disgorgement;

13 B) For injunctive relief ordering the continuing unfair business acts and practices to cease, or as
14 the Court otherwise deems just and proper;

15 C) For other injunctive relief ordering CIRCUI CITY to notify The CLASS that they have not
16 been paid the proper amounts required in accordance with California law

17
18 **4. ON ALL CAUSES OF ACTION**

19 A) An Order certifying the CLASS, approving PLAINTIFF as the Representative of the CLASS,
20 and permitting this case to proceed as a class action; and,

21 B) For such other and further relief as the Court deem just and proper.

22
23 Dated: April 14, 2008

CLARK & MARKHAM, LLP

24
25 By: 

26 DAVID R. MARKHAM
27 Attorney for Plaintiff
28

DEMAND FOR JURY TRIAL

PLAINTIFFS demand jury trial on issues triable to a jury.

Dated: April 17, 2008

CLARK & MARKHAM, LLP

By:


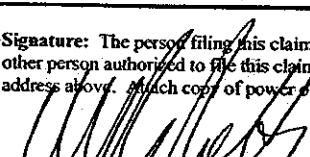

DAVID R. MARKHAM
Attorneys for Plaintiff

EXHIBIT 3

ORIGINAL

6039

B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT Eastern District of Virginia		PROOF OF CLAIM
Name of Debtor: Circuit City Stores, Inc.		Case Number: 08-35653 (KRH)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Robert Gentry and all those similarly situated		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: C/o Righetti Law Firm, P.C., Matthew Righetti 456 Montgomery Street, Suite 1400 San Francisco, CA 94104 Telephone number: (415) 983-0900		Court Claim Number: <u>N/A</u> (If known) Filed on: _____
Name and address where payment should be sent (if different from above): See above. Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <u>7,070,131.60</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(): _____ Amount entitled to priority: \$ _____ <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
2. Basis for Claim: <u>See Exhibit A attached.</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate: _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: 01/12/2009	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. 	RECEIVED JAN 13 2009 KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 1592 and 1597.

- ☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return



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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

-----X	:	
In re:	:	
	:	Chapter 11
CIRCUIT CITY STORES, INC., <u>et al.</u>	:	Case No. 08-35654
	:	
Debtors	:	Jointly Administered with
	:	Case No. 08-35653
-----X	:	

EXHIBIT A TO PROOF OF CLAIM

The case entitled Gentry v. Circuit City, Inc. was filed on August 29, 2002, in the Los Angeles Superior Court, Case No. BC280631. The case covers all California-based salaried customer service managers who worked overtime for Defendant, Circuit Stores, Inc. et al., and were not paid overtime wages from within the four years preceding the filing of the complaint and up to the time Defendants re-classified the position to non-exempt status, and thus, eligible for overtime. Mr. Gentry held the position of customer service manager for Circuit City. The company eliminated him in 2001. Mr. Gentry's ending salary was \$32,000. The calculations were arrived at by using the dates of August 29, 1998 to March 31, 2001.

To calculate the value of the Gentry v. Circuit City action the following formula was used:

Hourly rate \$15.38
x 1.5 (time and a half)
= \$23.07
x Overtime hours of 20 hours per week
= \$461.40
x work weeks (151)
= \$69,671.40
x the number of Circuit City, Inc. Stores (72 Stores)
= \$5,016,640.80

To calculate the waiting time penalties for the Gentry action the following formula was used:

Hourly rate (\$15.38)
x Hours per day (8)
x 30 Days
= \$3,691.20

x # of employees employed at Circuit City, Inc. Stores (138)
=\$509,385.60

Attorneys Fees (Righetti Law Firm, P.C.)
20% of Overtime and Waiting Time Totals
=\$1,105,205.20

Attorney's Fees (Ellen Lake) Law Office Of Ellen Lake
=\$438,900 [627 hrs]

Totals of Overtime, Waiting Time Penalties and Attorneys fees: \$7,070,131.60

B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT Eastern District of Virginia		PROOF OF CLAIM
Name of Debtor: Circuit City Stores West Coast, Inc.		Case Number: 08-35654 (KRH)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Jack Hernandez and all those similarly situated		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: C/o Righetti Law Firm, P.C., Matthew Righetti 456 Montgomery Street, Suite 1400 San Francisco, CA 94104 Telephone number: (415) 983-0900		Court Claim Number: N/A (If known) Filed on: _____
Name and address where payment should be sent (if different from above): See above. Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ 23,940,292.00 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
2. Basis for Claim: See Exhibit A attached. (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate % _____ Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
Date: 01/12/2009	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	

RECEIVED
JAN 13 2009

KURTZMAN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

- ☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

-----X	
In re:	:
	:
CIRCUIT CITY STORES, INC., <u>et al.</u>	:
	:
Debtors	:
	:
-----X	

Chapter 11
Case No. 08-35654

Jointly Administered with
Case No. 08-35653

EXHIBIT A TO PROOF OF CLAIM

The Hernandez v. Circuit City, Inc. was filed on April 17, 2008, in the San Diego Superior Court, Case No. 37-2008-00082173-CU-OE-CTL. The case covers all California-based salaried store managers 1) who worked at any time during the four years preceding the filing of the Complaint up until the date of class certification at any of the stores in the State of California owned, operated and/or acquired by Defendants. Mr. Hernandez held the position of Sales Manager. In April 2008, Hernandez filed this class action suit against Circuit City. He alleged that Defendant had wrongfully classified all Sales Managers as employees that were exempt from overtime compensation, and had illegally failed to pay overtime and to provide meal periods and rest breaks to them. The dates of April 17, 2004, to November 10, 2008, were used to calculate the workweeks. Mr. Hernandez's ending salary was \$50,000 and he worked 12-15 hour days, 6-7 days a week.

To calculate the value of the Hernandez v. Circuit City action the following formula was used:

Hourly rate \$24.03
x 1.5 (time and a half)
= \$36.04
x Overtime hours of 25 hours per week
= \$901.00
x work weeks (238)
= \$214,438.00
x the number of Circuit City, Inc. Stores (72 Stores)
= \$15,439,536.00

To calculate the waiting time penalties for the Card action the following formula was used:

Hourly rate (\$24.03)
x Hours per day (8)
x 30 Days
= \$5,767.20
x # of employees employed at Circuit City, Inc. Stores (764)
= \$4,406,140.80

Attorneys Fees
20% of Overtime and Waiting Time Totals
= \$4,077,956.00

Attorney's Fees (Ellen Lake) Law Office Of Ellen Lake
= \$16,660 [23.8 hrs]

Totals of Overtime, Waiting Time Penalties and Attorneys fees: \$23,940,292.00

EXHIBIT 4

2008 NOV -3 P 1:53

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

1 MATTHEW RIGHETTI, ESQ. {121012}
2 JOHN GLUGOSKI, ESQ. {191551}
3 RIGHETTI LAW FIRM, P.C.
4 456 Montgomery Street, Suite 1400
5 San Francisco, CA 94104
6 Telephone: (415) 983-0900
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8 Attorneys for Plaintiff

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN DIEGO

11 JONATHAN CARD and others
12 Similarly Situated

NO. 37-2008-00095260-CU-OE-CTL

CLASS ACTION

COMPLAINT

13 Plaintiff,

14 vs.

15 CIRCUIT CITY STORES, INC.,
16 and DOES 1 through 50 inclusive,

1. Violation of Labor Code;
2. Violation of B & P § 17200, et seq;
3. Failure to Provide Mandated Meal
Periods and Rest Breaks

17
18 Defendants.
19 _____

FIRST CAUSE OF ACTION

COMES NOW, Plaintiff, Jonathan Card (Plaintiff herein after) an individual over the age of eighteen (18), and brings this challenge to Defendant's lucrative, repressive and unlawful business practices on behalf of himself and a class of all others similarly situated and for a Cause of Action against Defendants, CIRCUIT CITY STORES, INC., and DOES 1-50, inclusive, (hereinafter "Defendants") and each of them, alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1.

This class action is brought pursuant to §382 of the California Code of Civil Procedure. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The monetary damages sought on behalf of each and every member of the class and as aggregate class damages exceed those jurisdictional limits as well. However, the claims of individual class members, including Plaintiff, are under the \$75,000 jurisdictional threshold for federal court. For example, a class member who was or has been employed for a relatively brief period could never reasonably be expected to receive a recovery of \$75,000 or more. The total damages for the entire case does not exceed \$5,000,000.00. In addition, there is no federal question at issue, as all the issues related to payment wages alleged herein are based solely on California law and statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and Business and Professions Code. Further there is no federal question at issue, as all the issues related to payment wages alleged herein are based solely on California law and statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and Business and Professions Code.

2.

Plaintiff, Jonathan Card ("Plaintiff") was employed in California as an Assistant Manager by CIRCUIT CITY STORES, INC., Mr. Card worked in Defendant's store as a salaried store employee within four years prior to the filing of this Complaint.

3.

Plaintiff brings this action against CIRCUIT CITY STORES, INC., for engaging in a uniform policy and systematic scheme of wage abuse against their salary paid employees in California. This scheme involved, inter alia, misclassifying the salaried store employees as "exempt" managerial/executive employees for purposes of the payment of overtime compensation when, in fact, they were "non-exempt" non-managerial employees according to California law. Further, CIRCUIT CITY STORES, INC., denied the salaried store employees mandated meal and rest breaks under California law. As a result of Defendant's systematic and clandestine scheme the salaried store employees throughout California were not paid all wages owed and were deprived of mandated meal periods and rest breaks. Accordingly, CIRCUIT CITY STORES, INC., has violated California common and statutory laws as described more particularly below.

4.

Defendant's own/owned and operate/operated an industry, business and establishment in approximately 100 separate geographic locations within the States of California, including San Diego County, for the purpose of operating a retail store to sell goods. As such, and based upon all the facts and circumstances incident to Defendant's business in California, Defendants are subject to California Labor Code Sections 1194, et seq., 500, et seq., California Business and Professions Code Section 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission. At least some of the acts complained of herein

1 occurred in San Diego County as Defendants own/owned and operate/operated stores in San
2 Diego County. Plaintiff is informed and believes and thereon alleges that at all times herein
3 mentioned Defendants are and were corporations licensed to do business and actually doing
4 business in the State of California.

5
6 5.

7 At all times herein mentioned Plaintiff and the class identified herein worked for
8 Defendants as salaried store employees in Defendant's stores. These salaried store positions are
9 not positions, which involve work falling within any exception to the above-referenced Labor
10 Code sections, the Unfair Practices Act and/or California Industrial Welfare Commission orders
11 applicable to Defendant's business.

12
13 6.

14 Plaintiff does not know the true names or capacities, whether individual, partner or
15 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
16 said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this
17 complaint when the true names and capacities are known. Plaintiff is informed and believes and
18 thereon alleges that each of said fictitious Defendants was responsible in some way for the
19 matters alleged herein and proximately caused Plaintiff and members of the class to be subject to
20 the illegal employment practices, wrongs and injuries complained of herein.

21
22 7.

23 At all times herein mentioned, each of said Defendants participated in the doing of the
24 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
25 Defendants, and each of them, were the agents, servants and employees of each of the other
26 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
27 acting within the course and scope of said agency and employment.

8.

At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

9.

At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged.

10.

At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged. Further, at all times mentioned herein, the wage and hour related compensation policies of stores in California are and were dictated by, controlled by, and ratified by the Defendants herein and each of them.

FACTUAL ALLEGATIONS

11.

Plaintiff and all members of the class identified herein were regularly scheduled as a matter of uniform company policy to work and in fact worked as salaried store employees in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or overtime compensation for such overtime hours worked in violation of California Labor Code Section 1194 and the applicable California Industrial Welfare Commission wage order(s). Plaintiff and the other members of the class were improperly and illegally mis-classified by Defendants as "exempt" managerial/executive employees when, in

1 fact, they were "non-exempt" non-managerial employees according to California law. Plaintiff
2 and the other members of the class have the right to be compensated by Defendants at the
3 appropriate compensatory wage rate for said work heretofore performed, consisting of the
4 straight time rate plus the appropriate overtime premium as mandated by California law.
5 Furthermore, Defendants failed to provide the Plaintiff and class members the required rest and
6 meal periods during the relevant time period as required under the IWC Wage Orders and thus
7 are entitled to any and all applicable penalties.
8

9 12.

10 This complaint is brought by Plaintiff pursuant to California Code of Civil Procedure
11 section 382 on behalf of a class. All claims alleged herein arise under California law for which
12 Plaintiff seeks relief authorized under California law. The class is comprised of, and defined as:
13

14 All California based salaried store assistant managers 1) who worked at
15 any time during the four years preceding the filing of this Complaint up
16 until the date of class certification at any of the stores in the State of
17 California owned, operated and/or acquired by Defendants.

18 The members of the class are so numerous that joinder of all members would be impractical, if
19 not impossible. The members of the class are readily ascertainable by a review of Defendant's
20 records. Further, the subject matter of this action both as to factual matters and as to matters of
21 law, are such that there are questions of law and fact common to the class which predominate
22 over questions affecting only individual members including, among other things, the following:

23 a. Statistically, one hundred percent of the class members were paid on a salary basis
24 with no overtime compensation paid for work accomplished in excess of forty hours per week, or
25 eight hours per day. Plaintiff is informed and believes and based thereon alleges that all class
26 members failed to meet the exemption requirements of California law such as 1) regularly spend
27 more than fifty (50) percent of their time performing exempt work; 2) customarily and regularly
28

1 exercised discretion and independent judgment and; 3) have authority to hire and fire. Thus,
2 Plaintiff and the class members were not exempt from the overtime requirements of California
3 law for that reason;

4 b. Defendants uniformly administered a corporate policy concerning both staffing
5 levels and duties and responsibilities of the class members which required that the class members
6 both work overtime without pay and regularly spend more than fifty (50) percent of their time
7 performing non-exempt tasks. This included a uniform corporate pattern and practice of
8 allocating and authorizing inadequate staffing levels at the individual stores. This corporate
9 conduct had the effect of placing customer service and other clerical "non-management" duties
10 and responsibilities onto the shoulders of the class members who were customarily and regularly
11 caused to work far in excess of forty hours in a week and/or eight hours in a day without pay.
12 Thus, Plaintiff and all other members of the class routinely, regularly and customarily (i.e., well
13 in excess of fifty (50) percent of their work time) performed non-exempt, non-managerial work
14 and work that did not regularly involve discretion and independent judgment. Therefore, such
15 employees are entitled to overtime compensation under California law.

16 c. The duties and responsibilities of the salaried store positions at the Defendant's
17 stores were virtually identical from region to region, district to district, store to store, and,
18 employee to employee. Further, any variations in job activities between the different individuals
19 in these positions are legally insignificant to the issues presented by this action since the central
20 facts remain, to wit: these employees performed non-exempt work in excess of fifty (50) percent
21 of the time in their workday, these employees did not regularly exercise discretion and
22 independent judgment; these employees' work routinely included work in excess of forty (40)
23 hours per week and/or eight (8) hours per day and they were not, and have never been, paid
24 overtime compensation for their work. Furthermore, Defendants failed to provide Plaintiff and
25

1 class members the required "off duty" rest and meal periods during the relevant time period as
2 required under the IWC Wage Orders.

3 d. Members of the class identified herein were discharged by Defendants or
4 voluntarily quit, and did not have a written contract for employment. The Defendants, in
5 violation of California Labor Code Sections 201, and 202, et seq., respectively, had a consistent
6 and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid
7 wages of all such former employees. The Defendants have willfully failed to pay the earned and
8 unpaid wages of such individuals, including, but not limited to, regular time, overtime, and other
9 wages earned and remaining uncompensated according to amendment, or proof.
10

11 13.

12 Although, DEFENDANTS claims that each store concept, corporate entity, branch and/or
13 division is a separate entity, named defendant, CIRCUIT CITY STORES, INC., was and/or is
14 also the joint employer of employees of all Defendant's stores.
15

16 14.

17 Although, DEFENDANTS claims that each store concept, branch, corporate entity and/or
18 division is a separate entity, in fact all of these entities constituted a single enterprise under
19 CIRCUIT CITY STORES, INC., and thus named defendant, was and/or is the single employer of
20 all salaried employees of all Defendant's stores in California.
21

22 15.

23 As a pattern and practice, also in violation of the aforementioned labor laws and wage
24 orders, Defendants did not maintain any records pertaining to when salaried store assistant
25 managers began and ended each work period, meal period, the total daily hours worked, and the
26 total hours worked per pay period and applicable rates of pay.
27
28

16.

There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the absent class members concerning whether Defendant's regular business custom and practice of requiring substantial "overtime" work and not paying for said work according to the overtime mandates of California law is, and at all times herein mentioned was, in violation of California Labor Code Sections 1194 and 500, et seq., the Unfair Practices Act and the applicable California Industrial Welfare Commission wage orders. Defendant's employment policies and practices wrongfully and illegally failed to compensate salaried store assistant managers for substantial overtime compensation earned as required by California law. For instance, questions of fact and/or law common to the members of the aforesaid class -- which predominate over any questions which may affect only individual members -- are:

- i. Whether Defendant's salaried employees were classified as "exempt" in violation of California law;
- ii. Whether Defendants uniformly failed to pay overtime wages to its salaried store assistant managers by virtue of Defendant's unlawful class wide designation of such employees as "exempt" in violation of California law;
- iii. Whether Plaintiff and the class could waive the wage and hour laws designed for their benefit under California law and whether such waivers were voluntary, knowing and valid;
- iv. Whether Defendant's conduct constituted an illegal, or unfair, business practice in violation of California law;
- v. Whether Plaintiff and the class are entitled to compensatory damages pursuant to the California Labor Code;

1 vi. Whether Plaintiff and the class are entitled to injunctive relief, including
2 restitution and/or disgorgement of profits pursuant to California law.

3 vii. What is the correct computation formula for the payment of overtime in
4 California?

5 viii. What work is customarily and regularly accomplished by class members in
6 Defendant's – and what category (exempt or non-exempt) does that work properly fall into?

7 ix. What are the realistic requirements of the salaried store assistant manager
8 positions?

9 x. What are the expectations of Defendants vis-à-vis the class members job
10 performance?

11 xi. Who has the burden of proof on the exemption issue?

12 xii. Can Defendant rely on the "sole charge" or "primary duty" exemption
13 standards applicable under federal law, or must Defendants comply with California's more strict
14 quantitative exemption standards?

15 xiii. Whether Defendants failed to provide Plaintiff and class members rest and
16 meal breaks in violation of California Labor Code and applicable IWC
17 wage orders;

18 17.

19 The claims of Plaintiff are typical of the claims of all members of the class. Plaintiff, as a
20 representative party, will fairly and adequately protect the interests of the class by vigorously
21 pursuing this suit through attorneys who are skilled and experienced in handling civil litigation of
22 this type.

18.

2 The California Labor Code and wage order provisions upon which Plaintiff asserts these
3 claims are broadly remedial in nature. These laws and labor standards serve an important public
4 interest in establishing minimum working conditions and standards in California. These laws
5 and labor standards protect the average working employee from exploitation by employers who
6 may seek to take advantage of superior economic and bargaining power in setting onerous terms
7 and conditions of employment. The nature of this action and the format of laws available to
8 Plaintiff and members of the class identified herein make the class action format a particularly
9 efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were
10 required to file an individual lawsuit, the corporate Defendants would necessarily gain an
11 unconscionable advantage since it would be able to exploit and overwhelm the limited resources
12 of each individual Plaintiff with its vastly superior financial and legal resources. Requiring each
13 class member to pursue an individual remedy would also discourage the assertion of lawful
14 claims by employees who would be disinclined to file an action against their former employer for
15 real and justifiable fear of retaliation and permanent damage to their careers at subsequent
16 employment.

19.

20 The prosecution of separate actions by the individual class members, even if possible,
21 would create a substantial risk of (1) inconsistent or varying adjudications with respect to
22 individual class members against the Defendants and which would establish potentially
23 incompatible standards of conduct for the Defendants, and/or (2) adjudications with respect to
24 individual class members which would, as a practical matter, be dispositive of the interests of the
25 other class members not parties to the adjudications or which would substantially impair or
26 impede the ability of the class members to protect their interests. Further, the claims of the
27

1 individual members of the class are not sufficiently large to warrant vigorous individual
2 prosecution considering all of the concomitant costs and expenses.

3
4 20.

5 Such a pattern, practice and uniform administration of corporate policy regarding illegal
6 employee compensation, as described herein, is unlawful and creates an entitlement to recovery
7 by the Plaintiff and the class identified herein, in a civil action, for the unpaid balance of the full
8 amount of the straight time compensation and overtime premiums owing, including interest
9 thereon, willful penalties, reasonable attorneys fees, and costs of suit according to the mandate of
10 California Labor Code Section 1194, et seq.

11 21.

12 Proof of a common business practice or factual pattern, of which the named Plaintiff's
13 experiences are representative, will establish the right of each of the members of the Plaintiff
14 class to recovery on the causes of action alleged herein.

15 22.

16 The Plaintiff class is entitled in common to a specific fund with respect to the overtime
17 compensation monies illegally and unfairly retained by Defendants. The Plaintiff class is entitled
18 in common to restitution and disgorgement of those funds being improperly withheld by
19 Defendants. This action is brought for the benefit of the entire class and will result in the
20 creation of a common fund.

21 WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class,
22 prays for judgment as hereinafter set forth.

23
24 **SECOND CAUSE OF ACTION**

25 COME NOW, Plaintiff, individually and on behalf of both the class and as a second,
26 separate and distinct cause of action against Defendants, and each of them, alleges as follows:
27
28

23.

Plaintiff herein repeats and re-alleges as though fully set forth at length each and every paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause of action for relief regarding Defendant's violations of Business and Professions Code 17200 et seq. (Unfair Practices Act).

24.

Defendants, and each of them, have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in Paragraphs 11 through 14, inclusive, to wit, by requiring their salaried store assistant managers to perform the labor services complained of herein without overtime compensation. Defendant's utilization of such unfair business practices constitutes unfair competition and provides an unfair advantage over Defendant's competitors. Plaintiff -- and members of the class -- seek full restitution and disgorgement of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein. Plaintiff seeks, on his own behalf and on behalf of the class, the appointment of a receiver, as necessary. The acts complained of herein occurred, at least in part, within the last four (4) years preceding the filing of the original complaint in this action.

25.

Plaintiff is informed and believes and on that basis alleges that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code section 17200, including those set forth in Paragraphs 11 through 14 herein thereby depriving Plaintiff and other members of the class minimum working condition standards and conditions due to them under the California labor laws and Industrial Welfare Commission wage orders as specifically described herein.

26.

Plaintiff, and all persons similarly situated, are further entitled to and do seek a both a declaration that the above-described business practices are unfair, unlawful and/or fraudulent and injunctive relief restraining Defendants from engaging in any of such business practices in the future. Such misconduct by Defendants, unless and until enjoined and restrained by order of this Court, will cause great and irreparable injury to all members of the class in that the Defendants will continue to violate these California laws, represented by labor statutes and IWC Wage Orders, unless specifically ordered to comply with same. This expectation of future violations will require current and future employees to repeatedly and continuously seek legal redress in order to gain compensation to which they are entitled under California law. Plaintiff has no other adequate remedy at law to insure future compliance with the California labor laws and wage orders alleged to have been violated herein.

THIRD CAUSE OF ACTION

COME NOW, Plaintiff, individually and on behalf of a class and as a third, separate and distinct cause of action against Defendants, and each of them, alleges as follows:

27.

Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

28.

Cal. Lab. Code §226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

29.

Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant part,
"Unless the employees is relieved of all duty during a 30 minute meal period, the meal period
shall be considered an 'on duty' meal period and counted as time worked."

30.

Industrial Welfare Commission Order No. 7-2001 (12)(A) authorizes employees to take
rest periods based on the total hours worked daily at the rate of ten minutes rest per four hours or
major fraction thereof.

31.

Cal. Lab. Code Section 512, which provides in relevant part:

Meal periods

An employer may not employ an employee for a work period of more
than five hours per day without providing the employee with a meal
period of not less than 30 minutes, except that if the total work period
per day of the employee is no more than six hours, the meal period
may be waived by mutual consent of both the employer and employee.
An employer may not employ an employee for a work period of more
than 10 hours per day without providing the employee with a second
meal period of not less than 30 minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be
waived by mutual consent of the employer and the employee only if
the first meal period was not waived.

32.

As alleged herein, Defendants routinely interrupted and/or failed to permit, authorize
and/or provide Plaintiff's and Class members' meal and rest breaks. By these actions, Defendants
violated Cal. Lab. Code §226.7(a) and is liable to Plaintiff and the Class.

33.

As a result of the unlawful acts of Defendants, Plaintiff and Class members have been deprived of meal and rest breaks, and are entitled to recovery under Cal. Lab. Code §226.7(b) in the amount of one additional hour of pay at the employee's regular rate of compensation for each work day that a meal or rest period was not provided.

WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class prays for judgment as follows:

1. Determining that this action may proceed and be maintained as a class action;
2. For the First Cause of Action:
 - a. A declaratory judgment that Defendant has violated Cal. Lab. Code
 - b. An award to Plaintiffs and the Class of damages for the amount of unpaid overtime compensation, including interest thereon, and penalties subject to proof;
 - c. An award to Plaintiffs and the Class of reasonable attorneys' fees and costs pursuant to Cal. Lab. Code § 1194 and/or other applicable state laws;
3. For the Second Cause of Action:
 - a. Ordering Defendant, its agents, servants, and employees, and all persons acting, directly or indirectly, in concert with it, to restore and disgorge all funds to each member of the Class acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and therefore constitute unfair competition under § 17200 et seq. of the California Business and Professions Code;
 - b. For injunctive relief pursuant to California Business & Professions Code § 17203, consisting of, inter alia: (1) a declaration that Defendant has engaged in unlawful and unfair business acts and practices in violation of California Business & Professions Code § 17200 et seq.; (2) a preliminary and/or permanent injunction enjoining Defendant and its respective successors, agents, servants, officers, directors, employees and all persons acting in concert with them from pursuing the policies, acts and practices complained of herein and prohibiting Defendant from continuing such acts of unfair and illegal business acts and practices; (3) Restitution pursuant to California Industrial Welfare Commission Order No. 7-2001(11)(D),

1 which provides: "[i]f an employer fails to provide an employee a meal
2 period in accordance with the applicable provisions of this Order, the
3 employer shall pay the employee one (1) hour of pay at the employee's
4 regular rate of compensation for each work day that the rest period is not
5 provided."

- 6 c. Restitution pursuant to California Industrial Welfare Commission Order
7 No. 7-2001(12)(C), which provides: "[i]f an employer fails to provide an
8 employee a rest period in accordance with the applicable provisions of this
9 Order, the employer shall pay the employee one (1) hour of pay at the
10 employee's regular rate of compensation for each work day that the rest
11 period is not provided;"

12 4. For the Third Cause of Action:

- 13 a. A declaratory judgment that Defendant has violated Cal. Lab. Code
14 §226.7;
15 b. An award to Plaintiffs and the Class of an additional hour of pay at the
16 employee's regular rate of compensation for each workday that a meal or
17 rest break was not provided;
18 c. An award to Plaintiffs and the Class of reasonable attorneys' fees and costs
19 pursuant to Cal. Lab. Code §1194 and/or other applicable state laws;
20 d. An award to Plaintiffs and the Class of interest, which shall accrue from
21 the date that the wages were due and payable, pursuant to Cal. Lab. Code
22 §218.6;

23 5. Awarding Plaintiffs and the Class their attorneys' fees and costs of suit to the
24 extent permitted by law;

25 6. All other relief as this Court may deem proper.

26 DATED: October 27, 2008

RIGHETTI LAW FIRM, P.C.

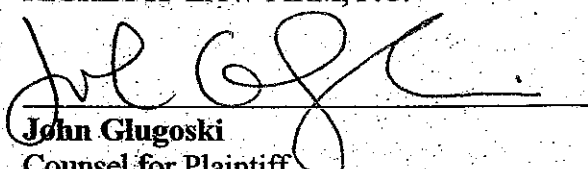
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EXHIBIT 5

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OF ORIGINAL FILED
Los Angeles Superior Court

DEC 19 2008

John A. Clark, Executive Officer/Clerk
By Michael Righetti Deputy
BENNETT SWAN

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
11 **BU 404195**

12 JOSEPH SKAF; MIGUEL PEREZ; and
13 GUSTAVO GARCIA; individually and
14 on behalf of other members of the
15 general public similarly situated,

16 Plaintiff.

17 vs.

18 CIRCUIT CITY STORES, INC, a Virginia
19 corporation; and Does 1 through 100,
20 inclusive,

21 Defendants.

Case No.

CLASS ACTION COMPLAINT

- (1) Violation of California Labor Code §§ 510 and 1198.
- (2) Violation of California Labor Code §§ 226.7 and 512(a)
- (3) Violation of California Labor Code § 226.7
- (4) Violation of California Labor Code § 204
- (5) Violation of California Labor Code §§ 201 and 202
- (6) Violation of California Labor Code § 226(a)
- (7) Violation of California Labor Code § 1174(d)
- (8) Violation of California Labor Code § 2800 and 2802
- (9) Violation of California Business & Professions Code §§ 17200, et seq.
- (10) Declaratory Relief

(11) Accounting

(12) Injunctive Relief

DEMAND FOR JURY TRIAL

COME NOW, Plaintiffs Joseph Skaf, Miguel Perez, and Gustavo Garcia, individually and on behalf of other members of the public similarly situated, and allege as follows:

PARTIES

1. Plaintiff Joseph Skaf ("Skaf") is an individual residing in the County of Los Angeles, State of California.
2. Plaintiff Miguel Perez ("Perez") is an individual residing in the County of Los Angeles, State of California.
3. Plaintiff Gustavo Garcia ("Garcia") is an individual residing in the County of Los Angeles, State of California.
4. Plaintiffs Skaf, Perez, and Garcia will hereinafter be collectively referred to as Plaintiffs.
5. Defendant Circuit City Stores, Inc. ("Circuit City"), at all time herein mentioned, was and is a Virginia corporation, with its corporate headquarters located at 9950 Mayland Drive, Richmond, Virginia 23233.
6. Circuit City and Does 1 through 100 will hereinafter be collectively referred to as Defendants.
7. Defendants own/owned and operate/operated an industry, business and establishment in over 100 separate geographic locations within the State of California, including within Los Angeles County, for the purpose of operating a retail store to sell goods.
8. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants Does 1 through 100, inclusive, are unknown to Plaintiffs who sue said defendants by such fictitious names. Plaintiffs are informed and

1 believe, and based on that information and belief allege, that each of the
2 defendants designated as a Doe is legally responsible for the events and happenings
3 referred to in this complaint, and unlawfully caused the injuries and damages to
4 Plaintiffs and the other class members alleged in this complaint. Plaintiffs will seek
5 leave of court to amend this complaint to show the true names and capacities when
6 the same have been ascertained.

7 9. At all times herein relevant, Circuit City and Does 1 through 100, and each of them,
8 were the agents, partners, joint venturers, representatives, servants, employees,
9 successors-in-interest, co-conspirators and assigns, each of the other, and at all
10 times relevant hereto were acting within the course and scope of their authority as
11 such agents, partners, joint venturers, representatives, servants, employees,
12 successors, co-conspirators and assigns, and that all acts or omissions alleged herein
13 were duly committed with the ratification, knowledge, permission, encouragement,
14 authorization and consent of each defendant designated herein.

15 10. Circuit City and Does 1 through 100 will hereinafter be collectively referred to as
16 Defendants.

17 **FACTUAL ALLEGATIONS**

18 11. Defendants employed Skaf from approximately May 1998 to approximately May
19 2007.

20 12. Defendants employed Skaf as an "Entertainment Manager" from approximately
21 February 2002 to approximately March 2005.

22 13. Defendants employed Skaf as a "Technology Manager" from approximately March
23 2005 to approximately January 2006.

24 14. Defendants employed Skaf as a "Sales Manager" from approximately January 2006
25 to approximately May 2007.

26 15. Defendants employed Perez from approximately October 1996 to approximately
27 May 2007.
28

- 1 16. Defendants employed Perez as a "Service and Installation Manager or "Road Shop
2 Manager" from approximately June 1998 to approximately January 2007.
- 3 17. Defendants employed Perez as an "Operations Manager" from approximately
4 January 2007 to approximately January 2008.
- 5 18. Defendants employed Garcia from approximately February 2000 to approximately
6 June 2006.
- 7 19. Defendants employed Garcia as a "Service and Installation Manager" or "Road Shop
8 Manager" from approximately August 2000 to approximately June 2006.
- 9 20. Plaintiffs are informed and believe, and based thereon allege, that at all times
10 herein relevant, Defendants were advised by skilled lawyers and other
11 professionals, employees, advisors, and consultants highly knowledgeable about
12 California wage law, employment and personnel practices.
- 13 21. Plaintiffs are informed and believe, and based thereon allege, that at all times
14 herein relevant, without any justification, Defendants ignored the employment and
15 personnel policy changes proposed by skilled lawyers and other professionals,
16 employees, advisors, and consultants highly knowledgeable about California wage
17 law, employment and personnel practice.
- 18 22. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
19 or should have known that Plaintiff and the other class members were entitled to
20 receive certain wages for overtime compensation and that they were not receiving
21 wages for overtime compensation.
- 22 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
23 or should have know that Plaintiff and the other class members were entitled to
24 receive all meal periods or payment of one additional hour of pay at Plaintiffs' and
25 the other class members' regular rate of pay when a meal period was missed.
- 26 24. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
27 or should have know that Plaintiffs and the other class members were entitled to
28

- 1 receive all rest periods or payment of one additional hour of pay at Plaintiffs' and
2 the other class members' regular rate of pay when a rest period was missed.
- 3 25. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
4 or should have know that Plaintiffs and the other class members were entitled to
5 receive all wages owed to them upon discharge or resignation.
- 6 26. Plaintiffs are informed and believes, and based thereon allege, that Defendants
7 knew or should have know that Plaintiffs and the other class members were entitled
8 to receive complete and accurate wage statements in accordance with California
9 law.
- 10 27. Plaintiff are informed and believe, and based thereon allege, that Defendants knew
11 or should have know that Plaintiffs and the other class members were entitled to
12 reimbursement of all necessary expenditures incurred by Plaintiffs and the other
13 class members in direct consequence of the discharge of their job duties or in direct
14 consequence of their obedience to the directions of the employer.
- 15 28. Plaintiff are informed and believe, and based thereon allege, that Defendants knew
16 or should have know that they had a duty to compensate Plaintiffs and the other
17 class members pursuant to California law, and that Defendants had the financial
18 ability to pay such compensation, but willfully, knowingly, and intentionally failed to
19 do so, and falsely represented to Plaintiffs and the other class members that they
20 were properly denied wages, all in order to increase Defendants' profits.
- 21 29. At all material times set forth herein, Defendants regularly and consistently failed to
22 pay overtime wages to Plaintiffs and the other class members.
- 23 30. At all material times set forth herein, Defendants regularly and consistently failed to
24 provide uninterrupted meal and rest periods to Plaintiffs and the other class
25 members.
- 26 31. At all material times set forth herein, Defendants regularly and consistently failed to
27 provide complete and accurate wage statement to Plaintiffs and the other class
28 members.

1 32. At all material times set forth herein, Defendants regularly and consistently failed to
2 pay Plaintiffs and the other class members all wages owed to them upon discharge
3 or resignation.

4 33. At all material times set forth herein, Defendants regularly and consistently failed to
5 reimburse Plaintiffs and the other class members for all necessary expenditures
6 incurred by Plaintiffs and the other class members in direct consequence of the
7 discharge of their job duties or in direct consequence of their obedience to the
8 directions of the employer.

9 **CLASS ACTION ALLEGATIONS**

10 34. Plaintiffs bring this action on their own behalf and on behalf of all other members of
11 the general public similarly situated, and thus, seek class certification under Code of
12 Civil Procedure § 382.

13 35. The proposed class consists of five subclasses, which are defined as follows:

14 **Subclass One:**

15 All current and former "Entertainment Managers," or persons with similar titles
16 and/or similar job duties, who worked for Circuit City in the State of California at any
17 time during the period from four years prior to the filing of this Complaint to final
18 judgment.

19 **Subclass Two:**

20 All current and former "Technology Managers," or persons with similar titles and/or
21 similar job duties, who worked for Circuit City in the State of California at any time
22 during the period from four years prior to the filing of this Complaint to final
23 judgment.

24 **Subclass Three:**

25 All current and former "Service & Installation Managers," (also referred to internally
26 as "Road Shop Managers") or persons with similar titles and/or similar job duties,
27 who worked for Circuit City in the State of California at any time during the period
28 from four years prior to the filing of this Complaint to final judgment.

1 Subclass Four:

2 All current and former "Sales Managers," or persons with similar titles and/or
3 similar job duties, who worked for Circuit City in the State of California at any time
4 during the period from four years prior to the filing of this Complaint to final
5 judgment.

6 Subclass Five:

7 All current and former "Operations Managers," or persons with similar titles and/or
8 similar job duties, who worked for Circuit City in the State of California at any time
9 during the period from four years prior to the filing of this Complaint to final
10 judgment.

11 36. Plaintiffs reserve the right to establish other subclasses as appropriate.

12 37. There class is ascertainable and there is a well-defined community of interest in the
13 litigation:

14 a. The class members are so numerous that joinder of all class members is not
15 impracticable. The membership of the entire class is unknown to Plaintiffs at this
16 time; however, the class is estimated to be substantially greater than four-hundred
17 (400) individuals and the identity of such membership is readily ascertainable by
18 inspection of Circuit City employment records.

19 b. Plaintiffs' claims are typical of all other class members' as demonstrated herein.
20 Plaintiffs will fairly and adequately protect the interests of the class members with
21 whom they have a well defined community of interest.

22 c. Plaintiffs will fairly and adequately protect the interests of each class member, with
23 whom they have a well-defined community of interest and typicality of claims, as
24 demonstrated herein. Plaintiffs have no interest that is antagonistic to the other
25 class members. Plaintiffs' attorneys, the proposed class counsel, are versed in the
26 rules governing class action discovery, certification, and settlement. Plaintiffs have
27 incurred, and during the pendency of this action will continue to incur, costs and
28

1 attorneys' fees, that have been, are, and will be necessarily expended for the
2 prosecution of this action for the substantial benefit of each class member.

3 d. A class action is superior to other available methods for the fair and efficient
4 adjudication of this litigation because individual joinder of all damages class
5 members is impractical. This case involves one large corporate employer (Circuit
6 City) and a large number of individual employees (Plaintiffs and the other class
7 members) with many relatively small claims with common issues of law and fact. If
8 each employee were required to file an individual lawsuit, the corporate employer
9 would necessarily gain an unconscionable advantage since it would be able to
10 exploit and overwhelm the limited resources of each individual class member with
11 its vastly superior financial and legal resources. Requiring each class member to
12 pursue an individual remedy would also discourage the assertion of lawful claims by
13 employees who would be disinclined to pursue an action against their present
14 and/or former employer for a justifiable fear of retaliation and permanent damage
15 to their careers at present and/or subsequent employment. Proof of a common
16 business practice or factual pattern, of which the named Plaintiffs experienced, that
17 is representative of the class mentioned herein, will establish the right of each class
18 member to recovery on the causes of action alleged herein. Class action will
19 achieve economies of time, effort, and expense as compared with separate lawsuits,
20 and avoid inconsistent outcomes because the same issues can be adjudicated in the
21 same manner for the entire class.

22 e. Public Policy Considerations: Employers of this great state violate employment and
23 labor laws every day. Current employees are often afraid to assert their rights out
24 of fear of direct or indirect retaliation. Former employees are fearful of bringing
25 actions because they believe their former employers can damage their future
26 endeavors through negative references and other means. Class actions provide the
27 class members who are not named in the complaint with a type of anonymity that
28 allows for the vindication of their rights.

- 1 38. There are common questions of law and fact as to the class members that
2 predominate over questions affecting only individual members. The following
3 common questions of law or fact, among others, exists as to the members of the
4 class:
- 5 a. Whether Defendants required Plaintiffs and the other class members to work over
6 eight (8) hours per day, over twelve (12) hours per day, and/or over forty (40) hour
7 per week and failed to pay the legally required overtime compensation to Plaintiffs
8 and the other class members;
- 9 b. Whether Defendants deprived Plaintiffs and the other class members of meal
10 periods or required Plaintiffs and the class members to work during meal periods
11 without compensation;
- 12 c. Whether Defendants failed to promptly pay all wages due to Plaintiffs and the other
13 class members upon their discharge or resignation;
- 14 d. Whether Defendants deprived Plaintiffs and the other class members of rest periods
15 or required Plaintiff and the class members to work during rest periods without
16 compensation;
- 17 e. Whether Defendants failed to pay all wages due to Plaintiffs and the other class
18 members within the required time upon their discharge or resignation;
- 19 f. Whether Defendants complied with wage reporting as required by the California
20 Labor Code; including but not limited to § 226;
- 21 g. Whether Defendants complied with the notice posting requirements under
22 California Labor Code § 207;
- 23 h. Whether Defendants failed to reimburse Plaintiffs and the other class members for
24 necessary business related expenses and costs.
- 25 i. Whether Defendants' conduct was willful or reckless;
- 26 j. Whether Defendants engaged in unfair business practices in violation of California
27 Business & Professions Code §§ 17200, et seq.; and
28

k. The appropriate amount of damages, restitution, and/or monetary penalties
resulting from Defendants' violation of California law.

FIRST CAUSE OF ACTION

(Violation of California Labor Code § 510 and 1198)

(Against CIRCUIT CITY and DOES 1 through 100)

39. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
through 38, and each and every part thereof with the same force and effect as
though fully set forth herein.

40. Pursuant to California Labor Code § 1198 and the applicable Industrial Welfare
Commission ("IWC") Wage Order, it is unlawful to employ persons without
compensating them at a rate of pay either time-and-one-half or two-times that
person's regular rate of pay, depending on the number of hours worked by the
person on a daily or weekly basis.

41. Pursuant to California Labor Code § 1198, the maximum hours of work and the
standard conditions of labor fixed by the commission shall be the maximum hours
of work and the standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under conditions of
labor prohibited by the order is unlawful.

42. Pursuant to the applicable IWC Wage Order, Defendants are and were required to
pay Plaintiffs and the other class members at the rate of time-and-one-half for all
hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
workweek.

43. The applicable IWC Wage Order further provides that Defendants are and were
required to pay Plaintiffs and the other class members overtime compensation at a
rate of two times her regular rate of pay for all hours worked in excess of twelve
(12) hours in a day.

44. Pursuant to California Labor Code § 510, any work in excess of eight hours in one
workday and any work in excess of 40 hours in any one workweek and the first eight

1 hours worked on the seventh day of work in any one workweek shall be
2 compensated at the rate of no less than one and one-half times the regular rate of
3 pay for an employee. Any work in excess of 12 hours in one day shall be
4 compensated at the rate of no less than twice the regular rate of pay for an
5 employee. In addition, any work in excess of eight hours on any seventh day of a
6 workweek shall be compensated at the rate of no less than twice the regular rate of
7 pay of an employee.

8 45. Pursuant to California Labor Code § 510, Plaintiffs and the other class members are
9 entitled to overtime compensation at one-and-one-half times the regular hourly
10 rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a
11 week or for the first eight (8) hours worked on the seventh day of work, and to
12 overtime compensation at twice the regular hourly rate for hours worked in excess
13 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh
14 day of work.

15 46. During the relevant time period, Plaintiffs and the other class members regularly
16 and/or consistently worked in excess of eight (8) hours in a day.

17 47. During the relevant time period, Plaintiffs and the other class members regularly
18 and/or consistently worked in excess of twelve (12) hours in a day.

19 48. During the relevant time period, Plaintiffs and the other class members regularly
20 and/or consistently worked in excess of forty (40) hours in a week.

21 49. During the relevant time period, Defendants intentionally and willfully failed to pay
22 overtime wages owed to Plaintiffs and the other class members.

23 50. Defendants' failure to pay Plaintiffs and the other class members overtime
24 compensation, as required by California laws, violates the provisions of California
25 Labor Code §§ 510 and 1198, and is therefore unlawful.

26 51. Pursuant to California Labor Code § 1194(a), notwithstanding any agreement to
27 work for a lesser wage, any employee receiving less than the legal minimum wage
28 or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage
2 or overtime compensation, including interest thereon, reasonable attorney's fees,
3 and costs of suit.

4 52. Pursuant to California Labor Code § 1194, Plaintiffs and the other class members are
5 entitled to recover unpaid overtime compensation, as well as interest, costs, and
6 attorneys' fees.

7 53. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
8 guilty of oppression, fraud, or malice, thereby warranting an award of punitive
9 damages against Defendants for the sake of example, and to punish Defendants and
10 deter others from engaging in similar misconduct.

11 **SECOND CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 226.7 and 512(a))**

13 **(Against CIRCUIT CITY and DOES 1 through 100)**

14 54. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
15 through 53, and each and every part thereof with the same force and effect as
16 though fully set forth herein.

17 55. At all times herein mentioned, the Industrial Welfare Commission Order and
18 California Labor Code §§ 226.7 and 512(a) were applicable to Plaintiffs' and the
19 other class members' employment by Defendants.

20 56. Pursuant to California Labor Code § 226.7, no employer shall require any employee
21 to work during any meal or rest period mandated by an applicable order of the
22 Industrial Welfare Commission.

23 57. Pursuant to California Labor Code § 512(a), an employer may not employ an
24 employee for a work period of more than five hours per day without providing the
25 employee with a meal period of not less than 30 minutes, except that if the total
26 work period per day of the employee is no more than six hours, the meal period
27 may be waived by mutual consent of both the employer and employee.
28

- 1 58. Pursuant to California Labor Code § 512(a), an employer may not employ an
2 employee for a work period of more than 10 hours per day without providing the
3 employee with a second meal period of not less than 30 minutes, except that if the
4 total hours worked is no more than 12 hours, the second meal period may be
5 waived by mutual consent of the employer and the employee only if the first meal
6 period was not waived.
- 7 59. During the relevant time period, Plaintiffs and the other class members who were
8 scheduled to work for a period of time in excess of six (6) hours were required to
9 work for a period of time in excess of six (6) hours, and were required to work for
10 periods longer than five (5) hours without an uninterrupted meal period of not less
11 than thirty (30) minutes.
- 12 60. During the relevant time period, Plaintiffs and the other class members who were
13 scheduled to work in excess of ten (10) hours but not longer than twelve (12) hours,
14 and who did not waive their legally-mandated meal periods by mutual consent were
15 required to work in excess of ten (10) hours without receiving a second
16 uninterrupted meal period of not less than thirty (30) minutes.
- 17 61. During the relevant time period, Plaintiffs and the other class members were
18 scheduled to work for a period of time in excess of twelve (12) hours was required
19 to work for periods longer than ten (10) hours without a second uninterrupted meal
20 period of not less than thirty (30) minutes.
- 21 62. During the relevant time period, Defendants intentionally and willfully required
22 Plaintiffs and the other class members to work during meal periods and failed to pay
23 Plaintiffs and the other class members the full meal period premium for work
24 performed during meal periods.
- 25 63. Defendants' conduct violates applicable Industrial Welfare Commission Wage
26 Orders, and California Labor Code §§ 226.7 and 512(a).
- 27 64. Pursuant to California Labor Code § 226.7(b), Plaintiffs and the other class members
28 are entitled to recover from Defendants one additional hour of pay at the

1 employee's regular rate of compensation for each work day that the meal or rest
2 period is not provided.

3 65. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
4 guilty of oppression, fraud, or malice, thereby warranting an award of punitive
5 damages against Defendants for the sake of example, and to punish Defendant and
6 deter others from engaging in similar misconduct.

7 **THIRD CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 226.7)**

9 **(Against CIRCUIT CITY and DOES 1 through 100)**

10 66. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
11 through 65, and each and every part thereof with the same force and effect as
12 though fully set forth herein.

13 67. At all times herein set forth, the California Industrial Welfare Commission Order and
14 California Labor Code § 226.7 was applicable to Plaintiffs' and the other class
15 members' employment by Defendants.

16 68. Pursuant to California Labor Code § 226.7, no employer shall require an employee
17 to work during any rest period mandated by an applicable order of the California
18 Industrial Welfare Commission.

19 69. During the relevant time period, Defendants required Plaintiffs and the other class
20 members of the class to work in excess of four (4) hours without providing them a
21 second ten (10) minute rest period.

22 70. During the relevant time period, Defendants required Plaintiffs and the other class
23 members to work an additional four (4) hours without providing a second ten (10)
24 minute rest period.

25 71. During the relevant time period, Defendants willfully required Plaintiffs and the
26 other class members to work during rest periods and failed to pay Plaintiffs and the
27 other class members the full rest period premium for work performed during rest
28 periods.

1 72. Defendants' conduct violates applicable Industrial Welfare Commission Wage
2 Orders, and California Labor Code § 226.7.

3 73. Pursuant to California Labor Code § 226.7(b), Plaintiffs and the other class members
4 of the class are entitled to recover from Defendants one additional hour of pay at
5 the employees' regular hourly rate of compensation for each work day that the rest
6 period was not provided.

7 74. Plaintiffs are informed and believe, and based thereon allege, that Defendants are
8 guilty of oppression, fraud, or malice, thereby warranting an award of punitive
9 damages against Defendants for the sake of example, and to punish Defendants and
10 deter other from engaging in similar misconduct.

11 **FOURTH CAUSE OF ACTION**

12 **(Violation of California Labor Code § 204)**

13 **(Against CIRCUIT CITY and DOES 1 through 100)**

14 75. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
15 through 74, and each and every part thereof with the same force and effect as
16 though fully set forth herein.

17 76. Pursuant to California Labor Code § 204(b)(1), all wages earned for labor in excess of
18 the normal work period shall be paid no later than the payday for the next regular
19 payroll period.

20 77. During the relevant time period, Defendants intentionally and willfully failed to pay
21 Plaintiffs and the other class members the overtime and/or regular wages due to
22 them, within any time period permissible under California Labor Code § 204.

23 **FIFTH CAUSE OF ACTION**

24 **(Violation of California Labor Code §§ 201 and 202)**

25 **(Against CIRCUIT CITY and DOES 1 through 100)**

26 78. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
27 through 77, and each and every part thereof with the same force and effect as
28 though fully set forth herein.

1 79. Pursuant to California Labor Code §§ 201 and 202, if an employer discharges an
2 employee, the wages earned and unpaid at the time of discharge are due and
3 payable immediately, and if an employee quits his or her employment, his or her
4 wages shall become due and payable not later than seventy-two 72 hours
5 thereafter, unless the employee has given seventy-two 72 hours notice of his or her
6 intention to quit, in which case the employee is entitled to his or her wages at the
7 time of quitting.

8 80. During the relevant time period, Defendants intentionally and willfully failed to pay
9 Plaintiffs and the other class members their wages, earned and unpaid, within
10 seventy-two (72) hours of Plaintiff and the other class members leaving Defendants'
11 employ.

12 81. Defendants' failure to pay Plaintiffs and the other class members their wages,
13 earned and unpaid, within (72) hours of her leaving Defendants' employ, is in
14 violation of California Labor Code §§ 201 and 202.

15 82. Pursuant to California Labor Code § 203, if an employer willfully fails to pay, without
16 abatement or reduction, in accordance with §§ 201 and 202, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall continue
18 as a penalty from the due date thereof at the same rate until paid or until an action
19 is commenced; but the wages shall not continue for more than 30 days.

20 83. Plaintiffs and the other class members are entitled to recover the statutory penalty
21 for each day they were not paid, at her regular hourly rate of pay, up to thirty (30)
22 days maximum pursuant to California Labor Code § 203.

23 **SIXTH CAUSE OF ACTION**

24 **(Violation of California Labor Code § 226(a))**

25 **(Against CIRCUIT CITY and DOES 1 through 100)**

26 84. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
27 through 83, and each and every part thereof with the same force and effect as
28 though fully set forth herein.

- 1 85. Pursuant to California Labor Code § 226(a), every employer shall furnish each of his
2 or her employees an accurate itemized statement in writing showing (1) gross
3 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
4 units earned and any applicable piece rate if the employee is paid on a piece-rate
5 basis, (4) all deductions, provided that all deductions made on written orders of the
6 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
7 inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and his or her social security number, (8) the name and address of the
9 legal entity that is the employer, and (9) all applicable hourly rates in effect during
10 the pay period and the corresponding number of hours worked at each hourly rate
11 by the employee. The deductions made from payments of wages shall be recorded
12 in ink or other indelible form, properly dated, showing the month, day, and year,
13 and a copy of the statement or a record of the deductions shall be kept on file by
14 the employer for at least three years at the place of employment or at a central
15 location within the State of California.
- 16 86. Defendants intentionally and willfully failed to provide Plaintiffs and the other class
17 members with complete and accurate wage statements. The deficiencies included
18 one or more of the following: the failure to include the total number of hours
19 worked by Plaintiffs and the other class members, the failure to include the hourly
20 rate, the failure to provide their social security numbers.
- 21 87. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs and
22 the other class members have suffered injury and damage to their statutorily-
23 protected rights.
- 24 88. More specifically, Plaintiffs and the other class members have been injured by
25 Defendants' intentional and willful violation of California Labor Code § 226(a)
26 because they were denied both their legal right to receive, and their protected
27 interest in receiving, accurate and itemized wage statements pursuant to California
28 Labor Code § 226(a).

1 89. Plaintiffs and the other class members are entitled to recover from Defendants the
2 greater of their actual damages caused by Defendants' failure to comply with
3 California Labor Code § 226(a), or an aggregate penalty not exceeding four
4 thousand dollars per employee.

5 SEVENTH CAUSE OF ACTION

6 (Violation of California Labor Code § 1174(d))

7 (Against CIRCUIT CITY and DOES 1 through 100)

8 90. Plaintiffs incorporates by reference the allegations contained in paragraphs 1
9 through 89, and each and every part thereof with the same force and effect as
10 though fully set forth herein.

11 91. Pursuant to California Labor Code § 1174(d), an employer shall keep, at a central
12 location in the state or at the plants or establishments at which employees are
13 employed, payroll records showing the hours worked daily by and the wages paid
14 to, and the number of piece-rate units earned by and any applicable piece rate paid
15 to, employees employed at the respective plants or establishments. These records
16 shall be kept in accordance with rules established for this purpose by the
17 commission, but in any case shall be kept on file for not less than two years.

18 92. Defendants have intentionally and willfully failed to keep accurate and complete
19 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and
20 the other class members.

21 93. As a result of Defendants' violation of California Labor Code § 1174(d), Plaintiffs and
22 the other class members have suffered injury and damage to their statutorily-
23 protected rights.

24 94. More specifically, Plaintiff and the other class members have been injured by
25 Defendants' intentional and willful violation of California Labor Code § 1174(d)
26 because they were denied both their legal right and protected interest, in having
27 available, accurate and complete payroll records pursuant to California Labor Code
28 § 1174(d).

EIGHT CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against CIRCUIT CITY and DOES 1 through 100)

95. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 94, and each and every part thereof with the same force and effect as though fully set forth herein.

96. Pursuant to California Labor Code § 2800, an employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care.

97. Pursuant to California Labor Code § 2802(a), an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

98. Plaintiffs and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including and without limitations, travel costs, including mileage and gasoline, for required trips that resulted from their employment with Circuit City.

99. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the class members for necessary business-related expenses and costs.

100. Plaintiffs and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

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NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against CIRCUIT CITY and DOES 1 through 100)

101. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 100, and each and every part thereof with the same force and effect as though fully set forth herein.
102. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs and the other class members, and Defendants' competitors. Accordingly, Plaintiffs and the other class members seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.
103. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, et seq.
104. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. As described herein, Defendants violated California Labor Code §§ 201, 204, 207, 226(a), 226.7, 510, 1174(d) and 1198, 2800, and 2802.
105. As a result the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.
106. Plaintiffs and the other class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.
107. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiffs and the other class members are entitled to restitution of the wages wrongfully withheld and retained by Defendants; a permanent injunction requiring Defendants to comply with California wage law, including but not limited to California Labor Code and applicable Wage Orders. In addition, Plaintiffs and the other class

1 members are entitled to an award of attorneys' fees and costs pursuant to
2 California Code of Civil Procedure § 1021.5 and other applicable laws.

3 **TENTH CAUSE OF ACTION**

4 **(Request for Declaratory Relief)**

5 **(Against CIRCUIT CITY and DOES 1 through 100)**

6 108. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
7 through 107, and each and every part thereof with the same force and effect as
8 though fully set forth herein.

9 109. Plaintiffs and the other class members seek entry of a declaratory judgment against
10 Defendants and in Plaintiffs' favor which declares Defendants' practices as
11 heretofore alleged to be unlawful, and which provided for recovery of all sums
12 determined by this Court to be owed by Defendants to Plaintiffs and the other class
13 members.

14 **ELEVENTH CAUSE OF ACTION**

15 **(Request for an Accounting)**

16 **(Against CIRCUIT CITY and DOES 1 through 100)**

17 110. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
18 through 109, and each and every part thereof with the same force and effect as
19 though fully set forth herein.

20 111. Plaintiffs and the other class members are owed wages which equal the sum of the
21 overtime compensation, and premium pay not paid by Defendants to Plaintiffs and
22 the other class members, statutory interest on such compensation, and each of
23 them, and waiting time penalties owed to members of the Plaintiff class whose
24 employment terminated.

25 112. Plaintiffs do not know the precise amount of compensation due to Plaintiffs and to
26 of the other class members. Upon information and belief, Plaintiffs allege that
27 Defendants, and each of them, possess records from which the amount of
28

1 compensation due and owing to each member of the Plaintiff class can be
2 determined.

3 113. Because Defendants alone possess records from which the amount of compensation
4 due and owing to each member of the PlaintiffS class, there is no adequate remedy
5 at law and an accounting is necessary.

6 **TWELFTH CAUSE OF ACTION**

7 **(Request for Injunctive Relief)**

8 **(Against CIRCUIT CITY and DOES 1 through 100)**

9 114. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
10 through 113, and each and every part thereof with the same force and effect as
11 though fully set forth herein.

12 115. Defendants have the policies heretofore alleged, and threaten to apply said policies,
13 to all class members who are currently employed by Defendants, including
14 Defendants' failure to pay overtime compensation in violation of Labor Code
15 § 1194, Defendants' failure to provide premium pay for meal and/or rest periods
16 worked in violation of Labor Code § 226.7, and Defendants' failure to pay
17 compensation at the time of termination in violation of Labor Code §§ 201-203.

18 116. Said class members have been injured and damaged and are threatened with
19 further injury and damage by Defendants' continuing unlawful refusal to pay all
20 overtime and premium pay owed. Plaintiffs and the other class members are
21 threatened with reasonably probable and immediate irreparable harm.

22 117. Defendants have acted, and threaten to act, on grounds generally applicable to said
23 members of the class, thereby making appropriate preliminary and permanent
24 injunctive relief enjoining Defendants and their agents from continuing the unlawful
25 practices heretofore alleged.

26 ///

27 ///

28 ///

PRAYER FOR RELIEF

WHEEFORE, Plaintiffs, individually and on behalf of all other members of the general public similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as the representative of the class;
3. That counsel for Plaintiffs be appointed as class counsel;
4. That Defendants provide to class counsel, immediately upon its appointment, the names and most current contact information (address and telephone numbers) of all class members.

As to the First Cause of Action

5. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
6. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
7. For the imposition of civil penalties and/or statutory penalties;
8. For punitive damages and/or exemplary damages according to proof at trial;
9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 1194; and
10. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

11. For all actual, consequential, and incidental losses and damages, according to proof;
12. For wages pursuant to California Labor Code § 226.7(b);
13. For the imposition of civil penalties and/or statutory penalties;
14. For punitive damages and/or exemplary damages according to proof at trial;
15. For reasonable attorneys' fees and costs of suit incurred herein; and
16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. For all actual, consequential, and incidental losses and damages, according to proof;
18. For wages pursuant to California Labor Code § 226.7(b);
19. For punitive damages and/or exemplary damages according to proof at trial;
20. For reasonable attorneys' fees and costs of suit incurred herein; and
21. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

22. For actual, consequential and incidental losses and damages, according to proof;
23. For pre-judgment interest on any untimely paid compensation, from the date such amount were due;
24. For punitive damages and/or exemplary damages according to proof at trial;
25. For reasonable attorneys' fees and costs of suit incurred herein; and
26. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

27. For actual, consequential and incidental losses and damages, according to proof;
28. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff and all other class members who have left Defendants' employ;
29. For reasonable attorneys' fees and costs of suit incurred herein; and
30. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

31. For actual, consequential and incidental losses and damages, according to proof;
32. For statutory penalties pursuant to California Labor Code §§ 226(e);
33. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g);
34. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 226(e); and
35. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

36. For actual, consequential and incidental losses and damages, according to proof;
37. For statutory penalties pursuant to California Labor Code §§ 1174.5;
38. For punitive damages and/or exemplary damages according to proof at trial;
39. For reasonable attorneys' fees and costs of suit incurred herein; and
40. For such other and further relief as the court may deem just and proper.

As to the Eight Cause of Action

41. For actual, consequential and incidental losses and damages, according to proof;
42. For the imposition of civil penalties and/or statutory penalties;
43. For punitive damages and/or exemplary damages according to proof at trial;
44. For reasonable attorneys' fees and costs of suit incurred herein; and
45. For such other and further relief as the court may deem just and proper.

As to the Ninth Cause of Action

46. For restitution of unpaid wages to Plaintiff and the other class members and
prejudgment interest from the day such amount were due and payable;
47. For the appointment of a receiver to receive, manage and distribute any and all
funds disgorged from Defendants and determined to have been wrongfully
acquired by Defendants as a result of violation of California Business & Professions
Code §§ 17200, et seq.;
48. For reasonable attorneys' fees and costs of suit incurred herein that Plaintiffs and
the other class members are entitled to recover under California Code of Civil
Procedure § 1021.5;
49. For injunctive relief to ensure compliance with this section, pursuant to California
Business & Professions Code § 17200, et seq.; and
50. For such other and further relief as the court may deem just and proper.

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As to the Tenth Cause of Action

51. For declaratory judgment;
52. For reasonable attorneys' fees and costs of suit incurred herein; and
53. For such other and further relief as the court may deem just and proper.

As to the Eleventh Cause of Action

54. For an accounting;
55. For reasonable attorneys' fees and costs of suit incurred herein; and
56. For such other and further relief as the court may deem just and proper.

As to the Twelfth Cause of Action

57. For preliminary and permanent injunctive relief;
58. For reasonable attorneys' fees and costs of suit incurred herein; and
59. For such other and further relief as the court may deem just and proper.

Dated: December 19, 2008

THE AIWAZIAN LAW FIRM

BY: 

Edwin Aiwazian


Attorneys for Plaintiffs and the Putative Class

DEMAND FOR JURY TRIAL

Plaintiffs, individually and on behalf of the members of the public similarly situated,
hereby demand a trial by a jury.

Dated: December 19, 2008

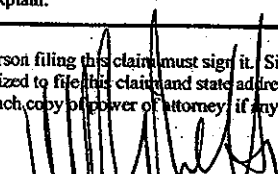
THE AIWAZIAN LAW FIRM

BY: 

Edwin Aiwazian

Attorneys for Plaintiffs and the Putative Class

EXHIBIT 6

UNITED STATES BANKRUPTCY COURT Eastern District of Virginia		PROOF OF CLAIM
Name of Debtor: Circuit City Stores West Coast, Inc.		Case Number: 08-35654 (KRH)
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Jonathan Card and all those similarly situated		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: N/A (If known) Filed on: _____
Name and address where notices should be sent: C/o Righetti Law Firm, P.C., Matthew Righetti 456 Montgomery Street, Suite 1400 San Francisco, CA 94104 Telephone number: (415) 983-0900		
Name and address where payment should be sent (if different from above): See above. Telephone number: _____		
1. Amount of Claim as of Date Case Filed: \$ 21,728,213.00 If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(). Amount entitled to priority: \$ _____ <small>*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
2. Basis for Claim: See Exhibit A attached. (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate: % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: 01/12/2009	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file the claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney if any. 	RECEIVED JAN 13 2009 STEVEN CARSON CONSULTANTS

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 1592 and 3571.

- ☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return



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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

-----X	
In re:	:
	:
CIRCUIT CITY STORES, INC., <u>et al.</u>	:
	:
Debtors	:
	:
-----X	

Chapter 11
Case No. 08-35654

Jointly Administered with
Case No. 08-35653

EXHIBIT A TO PROOF OF CLAIM

The Card v. Circuit City, Inc. was filed on November 3, 2008, in the San Diego Superior Court, Case No. 37-2008-00095260-CU-OE-CTL. The case covers all California based salaried store assistant managers 1) who worked at any time during the four years preceding the filing of the Complaint up until the date of class certification at any of the stores in the State of California owned, operated and/or acquired by Defendants. Mr. Card alleged that Defendant had wrongfully classified all Sales Managers as employees that were exempt from overtime compensation, and had illegally failed to pay overtime and to provide meal periods and rest breaks to them. The dates of November 3, 2004, through November 10, 2008, were used to calculate the unpaid overtime. Mr. Card held the position of Assistant Manager.

To calculate the value of the Card v. Circuit City action the following formula was used:

Hourly rate \$24.03
x 1.5 (time and a half)
= \$36.04
x Overtime hours of 25 hours per week
= \$901.12
x work weeks (210)
=\$189,236.25
x the number of Circuit City, Inc. Stores (72 Stores)
=\$13,625,010.00

///

To calculate the waiting time penalties for the Card action the following formula was used:

Hourly rate (\$24.03)
x Hours per day (8)
x 30 Days
= \$5,767.20
x # of employees employed at Circuit City, Inc. Stores (764)*
= \$4,406,140.80

Attorneys Fees
20% of Overtime and Waiting Time Totals
= \$3,697,063.20

Totals of Overtime, Waiting Time Penalties and Costs: \$21,728,213.00

* This figure for the Card action was arrived at by using the number of Sales Manager Positions in the Hernandez case.

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:)	Chapter 11
CIRCUIT CITY STORES, INC. <u>et al.</u> ,)	
Debtors.)	Case No. 08-35653
)	Jointly Administered
)	
)	

BASIS FOR CLAIM

On December 19, 2008, Joseph Skaf, Miguel Perez, and Gustavo Garcia filed a class action lawsuit against Circuit City Stores, Inc. in the Los Angeles Superior Court, Case No. BC 404195. This class action lawsuit is on behalf of all California-based salaried "Entertainment Managers," "Technology Managers," "Service & Installation Managers," "Sales Managers," and "Operations Managers" who worked at any time during the four years preceding the filing of the Complaint up until the date of final judgment at any of the stores in the State of California owned, operated, and/or acquired by Defendant Circuit City Stores, Inc.

Defendant employed Mr. Skaf as "Entertainment Manager" from approximately February 2002 to approximately March 2005, as "Technology Manager" from approximately March 2005 to approximately January 2006, and as "Sales Manager" from approximately January 2006 to approximately May 2007. Defendant employed Mr. Perez as "Service and Installation Manager" from approximately June 1998 to approximately January 2007 and as "Operations Manager" from approximately January 2007 to approximately January 2008. Defendant employed Mr. Garcia as "Service and Installation Manager" from approximately August 2000 to approximately June 2006.

The lawsuit alleges, among other things, the following: Defendant (1) failed to pay Mr. Skaf, and others similarly situated, overtime wages; (2) failed to provide Mr. Skaf, and

others similarly situated, meal and rest periods; (3) failed to timely pay their wages; (4) failed to furnish Mr. Skaf, and others similarly situated, complete and accurate wage statements; and (5) failed to reimburse Mr. Skaf, and others similarly situated, business-related expenses and costs.

The representative Plaintiffs' approximate ending salary was \$46,000 and they each worked 12-15 hour days, 6-7 days a week. To calculate the value of the Skaf vs. Circuit City, Inc. action, the following formula was used:

Overtime:

Hourly rate (\$22.11) x 1.5 (time and a half) = \$33.16

x Overtime hours of 30 hours per week = \$994.80

x Work weeks (208) = \$206,918.40

x Number of class members (350) = \$72,421,440.00

Waiting Time Penalties:

Hourly rate (\$22.11) x Hours per day (8) = \$176.88

x 30 days = \$5,306.40

x Number of employees employed at the California Circuit City Stores, Inc. stores (750)

= \$3,979,800.00

Attorneys Fees:

25% of Overtime and Waiting Time Totals = \$19,100,310.00

Overtime + Waiting Time Penalties + Attorneys Fees = \$95,501,550.00

EXHIBIT 7

Matt Righetti

From: Baker, Sarah K [Sarah.Baker@skadden.com]
Sent: Friday, October 02, 2009 10:01 AM
To: Matt Righetti
Subject: FW: In re Circuit City Stores, Inc., et al., Case No. 08-35653

Matt,

I was wondering whether you've had a chance to review the below?

From: Baker, Sarah K (CHI)
Sent: Tuesday, September 29, 2009 11:21 AM
To: 'Matt@righettilaw.com'
Subject: In re Circuit City Stores, Inc., et al., Case No. 08-35653

Matt:

As you know, this firm serves as general bankruptcy counsel to Circuit City Stores, Inc. ("Circuit City") and certain of its subsidiaries, debtors and debtors in possession (collectively, the "Debtors") in the above-referenced chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court").

I've reviewed Debtors' Forty-Fourth Omnibus Objection to Claims (Disallowance of Certain Duplicate Claims) (the "Objection") and proofs of claim filed on behalf of your clients, Jonathan Card and the alleged class of claimants similarly situated, against Circuit City Stores, Inc. and Circuit City West Coast, Inc.

You are correct that proofs of claim 13737 and 13738 do not appear duplicative of one another as they were filed against two different Debtors. However, proof of claim 14263 is duplicative of claim 13738 and claim 14178 is duplicative of claim 13737.

The Debtors propose to revise the final version of the Order to the Objection before it is entered as follows:

1. Claim 14263 will be disallowed. Claim 13738 will be the surviving claim.
2. Claim 14178 will be disallowed. Claim 13737 will be the surviving claim.

Because this was not a substantive objection, claims 13738 and 13737 will survive as filed, that is, as administrative claims in an unliquidated amount. The Debtors would also reserve their rights to object to the surviving claims on any grounds bankruptcy law and non-bankruptcy law permits, as set forth in the Objection.

Please let me know whether this proposal is acceptable.

Regards,

Sarah K. Baker
Associate
Corporate Restructuring
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive | Chicago | Illinois | 60606-1720
T: 312.407.0633 | F: 312.827.9467
sarah.baker@skadden.com

Skadden

To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

This email and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified any dissemination, distribution or copying of this email, and any attachments thereto, is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original copy and any copy of any email, and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

Matt Righetti

From: Baker, Sarah K [Sarah.Baker@skadden.com]
Sent: Friday, July 10, 2009 11:46 AM
To: Erin Winters
Cc: Matt Righetti
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Erin & Matt -

Your summary of our initial conversation was correct. When I looked back on my notes, I realized that we intentionally left the hearing date open.

I apologize for any confusion. The Hernandez response will be placed in a separate category until such time as the parties have had an opportunity to fully review the issues.

Sarah
Sarah K. Baker
Associate
Corporate Restructuring
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive | Chicago | Illinois | 60606-1720
T: 312.407.0633 | F: 312.827.9467
sarah.baker@skadden.com

Skadden

From: Erin Winters [mailto:Erin@righettilaw.com]
Sent: Friday, July 10, 2009 1:26 PM
To: Baker, Sarah K (CHI)
Cc: Matt Righetti
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Sarah -

After Debtors agreed to adjourn their objection to give Creditor Hernandez a chance to file a preliminary response, it was our understanding that the Debtors would be back in touch with our office to discuss the next steps for the response. Specifically, after Creditor Hernandez's filing of a preliminary response, Debtors would place Creditor Hernandez's response in a "separate category" of responses and then the parties would discuss how to further handle Debtors' objection.

Based on your email below (July 2, 2009), Creditor Hernandez's recently filed response was not intended to be a full discussion of the issues regarding the objection - instead it was a "Preliminary Response".

We will agree to set a hearing date; however, in conjunction with this date we believe that we should set a briefing schedule allowing Debtors to address Creditor Hernandez's response and then to allow Creditor Hernandez to respond to Debtors.

Erin Winters
Righetti Law Firm, P.C.
456 Montgomery St., Ste. 1400
San Francisco, CA 94104

Telephone: (415) 983-0900
Facsimile: (415) 397-9005

From: Baker, Sarah K [mailto:Sarah.Baker@skadden.com]
Sent: Friday, July 10, 2009 10:31 AM
To: Erin Winters
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Erin,

How does the August 27th hearing date sound for Hernandez ?

From: Erin Winters [mailto:Erin@righettilaw.com]
Sent: Wednesday, July 08, 2009 4:14 PM
To: Baker, Sarah K (CHI)
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Sarah - Why was Hernandez's 6045 claim objected to in the Nineteenth Objection re Claims Reclassification but not his 6049 claim? Is this because of the duplicate claim issue from the Tenth Omnibus objection?

-Erin

Erin Winters
Righetti Law Firm, P.C.
456 Montgomery St., Ste. 1400
San Francisco, CA 94104

Telephone: (415) 983-0900
Facsimile: (415) 397-9005

From: Baker, Sarah K [mailto:Sarah.Baker@skadden.com]
Sent: Thursday, July 02, 2009 3:01 PM
To: Erin Winters
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Based on the claims registry, proofs of claim 6047 (Card), 6049 (Hernandez), and 6052 (Gentry) were all objected to in Debtors' 10th omnibus objection to claims on the grounds that they are duplicative. I've attached the objection for your convenience.

Sarah

From: Erin Winters [mailto:Erin@righettilaw.com]
Sent: Thursday, July 02, 2009 4:35 PM
To: Baker, Sarah K (CHI)
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Thank you.

You also mentioned on the phone that Card was objected to as a duplicate claim. Do you have the motion or docket number for this objection? Also, have there been objections on the same ground in the Gentry (6039 & 6052), Hernandez (6049 & 6045), or Skaf (8717) cases?

Telephone: (415) 983-0900
Facsimile: (415) 397-9005

From: Baker, Sarah K [mailto:Sarah.Baker@skadden.com]
Sent: Thursday, July 02, 2009 2:31 PM
To: Erin Winters
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Skaf is on the claims registry at number 8717. It was not objected to as part of the Debtors' 19th Omnibus Objection.

From: Erin Winters [mailto:Erin@righettilaw.com]
Sent: Thursday, July 02, 2009 4:22 PM
To: Baker, Sarah K (CHI)
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Sarah – The number for Skaf is: 8717

Erin Winters
Righetti Law Firm, P.C.
456 Montgomery St., Ste. 1400
San Francisco, CA 94104

Telephone: (415) 983-0900
Facsimile: (415) 397-9005

From: Baker, Sarah K [mailto:Sarah.Baker@skadden.com]
Sent: Thursday, July 02, 2009 2:15 PM
To: Erin Winters
Subject: RE: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Can you provide me with the proof of claim numbers for those?

From: Erin Winters [mailto:Erin@righettilaw.com]
Sent: Thursday, July 02, 2009 4:00 PM
To: Baker, Sarah K (CHI)
Subject: FW: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Sarah –

One point of clarification, we received notices regarding Debtor's Nineteenth Objection to Claims for the following cases –
1. Gentry v. Circuit City and 2. Hernandez v. Circuit City.

We also represent Plaintiffs in two additional cases: 1. Skaf v. Circuit City and 2. Card v. Circuit City. Yet, we did not receive Debtor's motion regarding reclassification of these claims.

-Erin

Erin Winters
Righetti Law Firm, P.C.
456 Montgomery St., Ste. 1400
San Francisco, CA 94104

Telephone: (415) 983-0900
Facsimile: (415) 397-9005

From: Baker, Sarah K [mailto:Sarah.Baker@skadden.com]
Sent: Thursday, July 02, 2009 10:30 AM
To: Matt Righetti
Subject: In re: Circuit City Stores, Inc. (Case No. 08-35653)(EDVA)

Dear Mr. Righetti:

Pursuant to our telephone conversation this morning, with respect to Debtors' Nineteenth Omnibus Objection to Claims (Reclassification of Certain Misclassified Claims to General Unsecured, Non-Priority Claims) (Docket No. 3703), the Debtors will agree to adjourn their objection as to your clients upon the filing of a Preliminary Response. The Preliminary Response should include: Creditor's Name and Contact Information, Counsel's Contact Information, Claim No(s), and a Summary of the Creditor's Objection.

Please contact me if you have any questions.

Sarah K. Baker
Associate
Corporate Restructuring
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive | Chicago | Illinois | 60606-1720
T: 312.407.0633 | F: 312.827.9467
sarah.baker@skadden.com

Skadden

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Matt Righetti

From: Baker, Sarah K [Sarah.Baker@skadden.com]
Sent: Tuesday, August 25, 2009 2:00 PM
To: Matt Righetti
Subject: In re Circuit City Stores, Inc., et al, Jointly Administered (Case No. 08-35653)
Attachments: disclosurestatement.pdf

Matt:

Attached please find the Disclosure Statement with Respect to Joint Plan of Liquidation of Circuit City Stores, Inc. and its Affiliated Debtors and Debtors in Possession and its Official Committee of Creditors Holding General Unsecured Claims filed by the Debtors yesterday.

Also, the Debtors will be filling a supplemental order with regards to Debtors' Nineteenth Omnibus Objection to move Gentry (claim no. 6039) to the list of adjourned matters scheduled for hearing on October 15, 2009 at 2:00 p.m. As a reminder, you will need to file a preliminary response on behalf of Gentry.

Thanks again,

Sarah

Sarah K. Baker
Associate
Corporate Restructuring
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155 North Wacker Drive | Chicago | Illinois | 60606-1720
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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

